

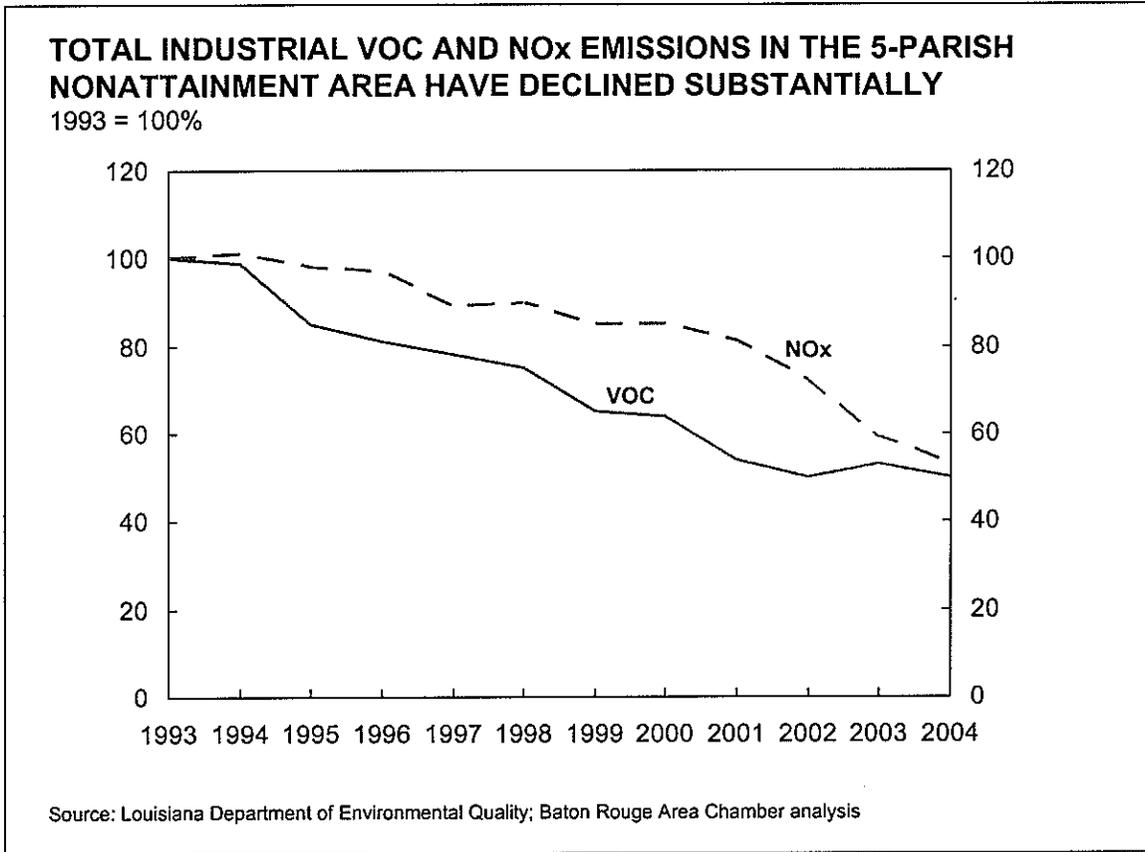
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President and CEO
Baton Rouge Area Chamber
Remarks Before Congress
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Introduction

The Baton Rouge Area Chamber is made up of over 1,500 businesses in the Baton Rouge metropolitan area. Our membership is comprised of large and small businesses that are as varied as the people in our community. As the voice of the Baton Rouge area business community, the Chamber strives to foster economic and community development so that one overriding goal will be met: the Baton Rouge area will be a better place for the people who live and work there.

Unfortunately, as we have tried to grow our community in positive ways, the Chamber, the people, and the businesses in our community have been required to devote substantial time and resources (that otherwise could have been spent on positive steps forward) to make sure that the mechanistic application of the Clean Air Act (“CAA”) did not cause greater problems than the ones the act was designed to solve. Cleaner air is an important part of our goal. However, the CAA must incorporate the flexibility necessary to allow our area to use its resources to achieve real progress rather than diverting resources to unnecessary activities that do not advance the goal of improved air quality.

Following the CAA Amendments of 1990, the Baton Rouge area was classified as “serious” non-attainment with the one-hour National Ambient Air Quality Standard for ozone. Over the last fifteen years, the Baton Rouge area community, including the Louisiana Department of Environmental Quality (LDEQ), has worked diligently to achieve attainment. We have followed the strict mandates of the CAA. We have enacted laws and regulations designed to reduce air emissions of ozone forming pollutants, nitrogen oxides (NO_x) and volatile organic compounds (VOC). We have submitted plans and emission budgets to EPA. We have installed expensive control equipment to reduce NO_x and VOC. We have instituted vehicle inspection programs, raised fees, and performed transportation studies. We have modeled emissions from industry sources, large and small, on-road and off-road vehicles, and biogenic sources (i.e., trees), and modeled the fate and transport of those emissions. In short, the Baton Rouge area has done everything that the CAA and the EPA required and/or suggested. As a result, tremendous emission reductions have been achieved as illustrated in the following chart.



Unfortunately, although the Baton Rouge area came within 1 - 2 parts per billion (“ppb”) of achieving attainment in 1999 and again in 2004, the rote application of the CAA forced us to divert attention and resources away from achieving attainment to fighting the potentially ruinous actions/penalties mandated by the CAA.

Under the CAA, every non-attainment area of similar classification is treated exactly the same way. The Baton Rouge area provides a perfect example of the inequities associated with the application of the CAA. Most “serious” and “severe” ozone non-attainment areas have a large number of industrial emitters and/or a large fleet of vehicles. Our area does not fit this mold. Although Baton Rouge area industry does produce its share of NO_x and VOC emissions, our community has a very small fleet of vehicles and those vehicles are fairly new, lower emitting models. Industry has reduced emissions, both voluntarily and through regulation, such that it is difficult to find additional reductions in significant amounts. In fact, industry is not the main source of VOC emissions in Baton Rouge; biogenic sources are actually the highest producers of VOC in the area. Baton Rouge also is not experiencing the slow, steady ozone rise that peaks with a summer afternoon exceedance. Instead, on the infrequent occurrence when there is an exceedance, Baton Rouge now experiences short duration, sharp spikes in ozone production, attributable to highly reactive VOCs reacting with the available NO_x. The CAA rules are designed to address the former, but not the latter. Although well intentioned and helpful in many areas, the blind application of CAA statutory mandates and the ‘one size fits all’

approach does not provide the flexibility and innovation needed to solve Baton Rouge's ozone problem.

In the wake of Hurricanes Katrina and Rita, the Baton Rouge area has taken on a large, permanent increase in population. While we readily have opened up our hearts and homes to our displaced neighbors from the New Orleans region, this influx of population creates new air quality challenges for us as it will result in increased numbers of houses, offices, and cars in the Baton Rouge area. Moreover, our state faces unprecedented challenges that we cannot adequately address without an unprecedented response from Congress. We deeply appreciate your efforts to help rebuild South Louisiana and pray that you will make good on President Bush's promise in Jackson Square to rebuild the Gulf Region better than it was before. The future of our entire state depends on a strong – and swift – federal response.

At this time, I would like to provide some information about Baton Rouge's non-attainment history, its fight against reformulated gasoline (RFG), and the litigation it has been forced to participate in to protect its interests.

History of BR Ozone

The Baton Rouge area's original ozone classification in 1991 of "Serious" was based on a design value that was within 5% of the 'Moderate' ozone classification. Over the years, Baton Rouge instituted all of the controls required by law, following EPA's guidance and modeling. The focus of those initial efforts was VOC reductions, which over time were realized.

When it became apparent that the biogenic component of Baton Rouge's emissions was so large that further anthropogenic VOC reductions would have little impact, a NOx strategy was adopted. In other words, the Baton Rouge area had reduced VOC as much as possible. After spending hundreds of millions of dollars to reduce VOC, we learned that was not good enough. EPA-approved studies showed that the Baton Rouge area's ozone levels were strongly sensitive to NOx but not to VOC. In late 2001, the Baton Rouge area implemented a 30% across-the-board reduction in major point source NOx emissions, effective as soon as possible but no later than May, 2005. The current NOx strategy offers the Baton Rouge area an opportunity for achieving attainment.

The Baton Rouge area has seen a steady and substantial downward trend in its ozone design value. By its 1999 attainment date under the 1-hour standard, Baton Rouge was only 2 ppb from attainment, down from about 40 ppb over attainment in 1991. This contrasts with many other nonattainment areas that showed little improvement or even degradation. Although the Baton Rouge area did not attain the 1-hour standard, it had improved to the point that, according to the classifications under the CAA, the area was at "Marginal" status. Unfortunately, because of the strict requirements of the CAA, Baton Rouge was slated to be reclassified as "Severe," like Houston.

At this point, EPA did work with our community. EPA's models showed that ozone was transported from the Houston/Galveston and Beaumont areas in sufficient amounts that Baton Rouge's own ozone levels were raised by 2-6 ppb, an amount EPA itself termed 'significant' and in fact an amount large enough to have prevented attainment. As a 'downwind' area, Baton Rouge qualified for, and EPA granted, an extension of its attainment date under a nationwide EPA policy. But that policy was struck down by the Fifth Circuit because it was not literally provided for in the CAA.

Judicial decisions interpreting the CAA "bump-up" provision finally forced EPA to reclassify Baton Rouge from 'Serious' to 'Severe' and withdraw its attainment date extension. Despite the fact that Baton Rouge area was only 2 ppb from attainment and would be classified as 'Marginal' under the 1-hour standard, the CAA dictated that Baton Rouge be classified as 'Severe.'

Based on its re-classification to 'Severe' after the bump-up, new, very strict requirements were to be applied to Baton Rouge. The mandate to implement RFG, Section 185 or 'penalty' fees, and a reduced major source threshold were a few of the new requirements imposed on Baton Rouge under the CAA. The new requirements under the 'Severe' standard were projected to cost hundreds of millions of dollars in direct and indirect costs. The economy of the Baton Rouge area was on the brink of a major disruption.

Against this backdrop, two significant events occurred. First, a coalition of Baton Rouge interests joined together to resist the RFG mandate. Second, EPA issued the 8-hour Ozone Implementation Rule. Each of these events will be discussed.

RFG

As the June 23, 2004 deadline for the implementation of RFG in Baton Rouge loomed nearer, it became increasingly apparent that RFG – while successful in areas with large fleets of vehicles – was not a good idea due to the enormous negative impacts it would have on our community. First, it would interfere with attainment because it is designed to decrease VOC emissions, but it actually causes an increase in NOx emissions – the opposite result than what is needed in the Baton Rouge area. Second, it would cause health problems due to increasing rather than decreasing the ozone forming potential of the area. Third, it would create huge economic hardships.

RFG was documented by EPA's approved models (MOBILE6 and MOBILE6.2) to cause NOx increases from on-road vehicles in Baton Rouge. Studies from around the country further documented this fact. When NOx emissions from RFG-fueled off-road vehicles (a significant component of the Baton Rouge inventory) were added, there was a clear "disbenefit" from NOx increases of about 400 tons per year. In other words, RFG use in Baton Rouge would have caused NOx emissions to increase by at least 400 tons. A correlation between RFG and poor vehicle Inspection and Maintenance performance also was documented. The "disbenefits" clearly created substantial challenges with the current EPA-approved ozone control strategy,

which relies on NOx decreases.

Further, ethanol-based RFG, which was to be used in Baton Rouge, increased NOx emissions even more than standard RFG, adding to the interference with achieving attainment. Ethanol-based RFG was also proven to increase certain air toxics and VOC emissions through evaporative losses (permeation) and commingling.

RFG in the Baton Rouge area also would have increased health problems associated with ozone. As VOC and NOx are increased, ozone levels are more likely to increase, thus increasing the very health problems the CAA is designed to minimize.

The imposition of RFG in Baton Rouge also would have produced severe economic hardship. A respected LSU Professor of Economics, Dr. Loren Scott, conducted a study in which he found that the economic impacts would be catastrophic. Gas prices were estimated to increase by 10-15 cents per gallon. Approximately 1,000 jobs and tens of millions of dollars in household income were to be lost. The oil marketers would have to retrofit their tanks to meet the UST compatibility requirements for ethanol-based fuel. Dr. Scott's economic model estimated that the cost to Baton Rouge in increased gas prices, lost earnings, and lost sales would be approximately 150 million dollars. Moreover, due to the small size of the 5-parish (county) area, and the ease of gasoline purchases out of the area, many small retailers on the edges of the area would have been put out of business.

There was and is a clear alternative to RFG which was applicable in Baton Rouge. The new Tier 2-low sulfur gasoline has been shown to significantly reduce NOx emissions. Thus, there was no need to implement RFG in Baton Rouge, with its associated "disbenefit" and economic hardship, when a suitable alternative existed that provided as much or greater environmental benefit as soon to go into effect. This low sulfur gasoline was being phased in across the country, including Louisiana, in 2004, with full implementation in 2005. EPA's own rulemaking for Tier 2 gasoline used models to project that the Baton Rouge area would achieve attainment with the ozone standard through its use. This rulemaking even relied upon that fact as economic justification for the rule. The Tier 2 rulemaking did not in any way ever consider that RFG would be required instead of Tier 2 fuel in Baton Rouge. However, although EPA explicitly relied on use of Tier 2 fuel in Louisiana as a justification to pass the rule, the CAA seems to completely preclude a state or region from considering these nationwide fuel improvement programs as an ozone attainment measure. Instead, the Baton Rouge area is forced to use RFG by a completely separate fuel provision in the Act.

The CAA, as written, seemed to offer EPA no flexibility. Having had its transport policy overturned, EPA was understandably reluctant to go out on a limb for Baton Rouge. While EPA expressed concern regarding the evidence presented by Baton Rouge, it felt constrained by the wording of the CAA itself.

The Chamber decided to take the initiative, filing a request in the U.S. Fifth Circuit for a review of EPA's decision regarding the use of RFG in Baton Rouge and requesting a stay of the RFG mandate. All of the evidence noted above was placed before the court. On June 18, 2004,

just a few days prior to the deadline for implementing RFG, the Fifth Circuit granted the Chamber's request for a stay. EPA agreed to review the use of RFG and agreed to keep the stay in effect while it conducts that review. However, it is important to note that the existence of the judicial proceedings was the only avenue available to EPA, under the CAA, to review the use of RFG in Baton Rouge. Without the litigation over RFG, EPA would not have been able to fashion a remedy for the Baton Rouge area under the wording of the CAA.

The 8-hour Implementation Rule

When EPA issued the new Implementation Rule for the ozone 8-hour standard in 2004, the Baton Rouge area missed attainment with the new standard by a mere 1 ppb. It was therefore classified under the new, more stringent and protective 8-hour standard as 'Marginal.'

The issuance of the Phase I Implementation Rule provided some benefits for the Baton Rouge area. First, it revoked the old 1-hour standard. Second, a new attainment date of June 15, 2007 was established for compliance with the 8-hour standard for marginal areas. Third, the major source threshold for New Source Review was raised from 25 tons per year (applicable to 'Severe' areas) to 100 tons per year. Fourth, on the effective date of the revocation of the 1-hour standard (June 15, 2005), areas that were once classified as 'Severe' under the 1-hour standard were not obligated to impose penalty fees for continued failure to attain. However, the Implementation Rule does provide one 'disbenefit' to Baton Rouge. Under its so-called 'anti-backsliding' provisions, many of the 'Severe' requirements that applied to the Baton Rouge area would still have to be implemented, even though our community was properly classified as 'Marginal' under the 8-hour standard.

Review of the Implementation Rule was sought by a diverse group of petitioners, including the Chamber. Eventually, all petitions were consolidated in the District of Columbia Circuit where such entities as the South Coast Air Quality District (Southern California), the Louisiana Environmental Action Network, the States of Ohio and Georgia (on behalf of the City of Atlanta), various environmental groups, various industry groups, and certain northern states are all joined together with the Chamber, asserting differing positions on many aspects of the Implementation Rule.

The Chamber has two basic positions in the current litigation.

First, the Phase I Implementation Rule in its current form is important to the Baton Rouge area and must be upheld and protected from the attacks of the Environmental Petitioners. The Environmental Petitioners strenuously contest portions of the rule and will continue to do so. They will advance their arguments in the court and request that the court overturn the Phase I Implementation Rule. If that occurs, the old 1-hour standard may not be revoked, penalty fees may again be applicable for failure to attain the 1-hour standard, and the major source threshold may be returned to 'Severe' levels. Such a result would gravely impact the Baton Rouge area. LDEQ has stated in its Fiscal and Economic Impact that penalty fees would result in an \$85 million increase in fees, the possible shut down of facilities, and a negative effect on competition

between companies in the Baton Rouge nonattainment area and those on the outside of the area that do not have to pay the penalty fee. A lower major source threshold would cause increased difficulty for sources to modify existing permits, require smaller sources to install tougher control equipment, and require many small industrial sources to obtain Title V major source permits. It is doubtful whether this result will actually assist the Baton Rouge area in solving its ozone problem, and such efforts are not needed as other measures enacted by both the state and EPA will address our ozone issues. For example, LDEQ is targeting specific voluntary HRVOC reduction measures that became effective through agreements with 16 large sources in May 2005 and has extended NOx reduction measures to certain attainment parishes surrounding the nonattainment area. Neither of these measures is prescribed by the CAA, yet they are projected to be effective for our area. Further, EPA has several new programs that will substantially affect ozone. Two examples: 1) In 2006 and 2007 EPA's new clean diesel fuel requirements will take effect and are projected to reduce NOx and PM10 emissions by substantial levels; and 2) power plants in Louisiana are required to reduce NOx emissions by approximately 50% on a statewide aggregate basis under the Clean Air Interstate Rule.

Prior to Hurricanes Katrina and Rita, we had identified the imposition of the penalties associated with a "Severe" classification under the now defunct 1-hour standard as the greatest short-term economic threat facing the Baton Rouge area: taking into account increased fees, likely facility closures, and foregone economic development opportunities, we estimate that our regional economy would sustain a negative economic drain of roughly \$300-500 million per year for the foreseeable future. This obviously would have a hugely detrimental impact on the businesses and families of the Baton Rouge area.

Our second position is that the EPA has no legal authority to require that an area retain or implement requirements that are beyond the requirements of its 8-hour classification. Requirements that were applicable based on its old classification under the 1-hour standard, i.e., the 'anti-backsliding' provisions, are beyond EPA's statutory authority to implement and are not a reasonable interpretation of the Clean Air Act.

The Chamber is forced to assert Baton Rouge's interests in the litigation to ensure that the beneficial aspects of the Implementation Rule are upheld. Although "Marginal" under the 8-hour standard, the Baton Rouge area over the years implemented requirements mandated by the CAA for 'Serious' areas when it was a "Serious" area under the 1-hour standard. Substantial and continuing reductions of ozone in the region have been achieved. Despite this, many petitioners actually seek the imposition of penalty fees and lower major source thresholds. Unless the Implementation Rule is upheld, the Baton Rouge area will again be faced with the more draconian aspects of the CAA, which will again be applied to it in a mechanistic or rote fashion, without the possibility of exception and without real benefit to air quality in our community.

Conclusion

As can be seen from our community's history, flexibility is not a hallmark of the CAA. The Chamber understands that the CAA was amended in 1990 to limit EPA's discretion to a certain degree. The addition of certain CAA Subpart 2 provisions specifying the exact programs that apply in a given classification is one example. RFG is another. Unfortunately, stringent provisions, however well-meaning and designed to enhance the quality of the air we breathe, when enacted without exception or with exceptions that are too narrowly drawn and difficult to meet, can lead to results that may end up harming the environment and/or the economy. This seems especially harsh when attainment just barely eludes a community, such as the Baton Rouge area, that has faithfully followed the law and EPA guidance over the years.