waller

511 Union Street, Suite 2700
P.O. Box 198966
Nashville, TN 37219-8966

615.244.6380 main
615.244.6804 fax
wallerlaw.com

Michael K. Stagg
Waller Lansden Dortch & Davis, LLP
615.850.8876 direct
michael.stagg@wallerlaw.com

July 20, 2012

VIA E-MAIL and HAND DELIVERY

Ms. Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: ***Shelby County, Tennessee's Petition for Reconsideration of Final Rule, Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77 Fed. Reg. 30,088 (May 21, 2012)***

Dear Administrator Jackson:

This firm represents Shelby County, Tennessee ("County"), and I write on its behalf. The County is filing a Petition for Reconsideration of the Final Rule referenced above that designates the County as nonattainment under the 2008 ozone NAAQS. A copy of the Petition is attached. I understand that the State of Tennessee also filed a Petition for Reconsideration regarding EPA's designation of the County as nonattainment. The County adopts the State's petition, attachments, and exhibits.

EPA designated the entire County nonattainment under the 2008 ozone NAAQS. The County requests that EPA reconsider that designation, and designate the entire County attainment for ozone. Thank you for your consideration of the County's Petition for Reconsideration.

Very truly yours,

Michael K. Stagg

Michael K. Stagg

cc: Gina McCarthy, USEPA-HQ-OAR
Janet McCabe, USEPA-HQ-OAR
Beverly Banister, USEPA-Region 4 Atlanta
Robert J. Martineau, Jr., Commissioner, Tennessee Department of Environment and Conservation

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of:	)	
	)	
FINAL RULE,	)	
AIR QUALITY DESIGNATIONS	)	**EPA-HQ-OAR-2008-0476;**
FOR THE 2008 OZONE NATIONAL	)	**FRL-9668-2, RIN 2060-AP37**
AMBIENT AIR QUALITY STANDARDS,	)	
77 FED. REG. 30,088 (MAY 21, 2012)	)	
	)	
	)	
SHELBY COUNTY, TENNESSEE,	)	
	)	
Petitioner.	)	

PETITION FOR RECONSIDERATION

Pursuant to Section 307 of the Clean Air Act ("CAA"), 42 U.S.C. § 7607, Shelby County, Tennessee ("Shelby County"), through the undersigned counsel, files this Petition for Reconsideration and requests that the Administrator of the United States Environmental Protection Agency ("EPA") convene a proceeding to reconsider the "Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards," 77 Fed. Reg. 30,088 (May 21, 2012) (the "Final Rule"). As described below, this petition is based upon new information of central relevance not available during the public comment period for the Final Rule.

Shelby County notes that the State of Tennessee also has submitted a Petition for Reconsideration of this Final Rule (filed July 19, 2012). Shelby County adopts Tennessee's Petition and incorporates it herein by reference. Tennessee requests EPA revise its County-wide nonattainment designation to a County-wide attainment status, or alternatively, a partial-County attainment status. However, Shelby County urges EPA to designate the entire County attainment for ozone. Shelby County also adopts and incorporates herein by reference the attachments and

exhibits to Tennessee's Petition, and shall refer to those exhibits by number throughout this Petition.

INTRODUCTION

Shelby County alleges that EPA's promulgation of the Final Rule was arbitrary, capricious, and otherwise not in accordance with law because (1) EPA Regions acted inconsistently in selecting the data sets on which to base the designations in the Final Rule; (2) EPA failed to use the most recent data available in designating Shelby County as nonattainment for ozone; and (3) EPA failed to consider the State of Tennessee's argument that Shelby County did not meaningfully contribute to violations in Crittenden County, Arkansas. In addition, EPA acted arbitrarily and capriciously and in abuse of its discretion by neglecting the President's order to promote economic growth, job creation, and predictability while reducing uncertainty and the regulatory burdens on state and local governments (*see* TN Exhibit 21), particularly when its own modeling predicted that the Memphis, TN-MS-AR area would be in attainment with the 2008 ozone standard by 2014 without additional local actions to reduce emissions. *See* TN Exhibit 2 at 2. In all cases, EPA's actions were made after the Final Rule's public comment period expired on February 3, 2012, and within the relevant periods for judicial review.

The arbitrary and capricious actions regarding the data sets violate the CAA's implementing regulations, as well as EPA's written policies, and are therefore unlawful. Had EPA acted consistently and used the most recent data available in making the Memphis, TN-MS-AR area designations, it likely would have designated Shelby County as attainment for ozone. As such, EPA's arbitrary, capricious, and unlawful actions regarding the use of data sets are of central relevance to outcomes in the Final Rule.

EPA's actions regarding the data sets also affected its decision not to evaluate whether Shelby County meaningfully contributed to a violating monitor in Crittenden County, Arkansas. Had EPA acted consistently and used the most recent data available in making the Memphis-area designations, it could have designated Shelby County as nonattainment only by finding that Shelby County meaningfully contributes to the nonattaining monitor in Crittenden County. Thus, EPA's arbitrary, capricious, and unlawful failure to make this finding is of central relevance to outcomes in the Final Rule.

EPA also acted arbitrarily, capriciously, and in abuse of its discretion by designating Shelby County nonattainment despite Presidential admonishments to promote economic growth and job creation when engaging in agency action. *See* TN Exhibit 21. A nonattainment designation severely hampers economic expansion and increases regulatory burdens on state and local agencies, an outcome EPA specifically said it would consider in proceeding with the 2008 ozone designation process. *See* TN Exhibit 2. The Shelby County designation undermines such policy concerns when EPA's modeling has predicted that the Memphis, TN-MS-AR area will be in attainment with the 2008 ozone standard in 2014. *See* TN Petition at 9, n.2. Had EPA considered these modeling results, the President's orders, and its own written policy when making its designations, it could have designated Shelby County attainment. Thus, EPA's abuse of discretion and its arbitrary and capricious action in failing to consider the modeling and stated policy concerns are of central relevance to the outcomes in the Final Rule.

FACTUAL AND PROCEDURAL BACKGROUND

The designation process for the 2008 ozone national ambient air quality standard began on December 4, 2008, when EPA issued guidance to the states regarding governors' requirements to provide EPA with a list of all areas in the state and recommendations as to

whether each area meets the ozone standard. *See* TN Exhibit 18 at 30,090. This guidance identified important factors that EPA recommended governors use in making their recommendations. Although EPA initially intended to make final designations by March 12, 2010, it announced its intent to reconsider the 2008 ozone standard on September 16, 2009. *Id.* EPA signed the proposed reconsideration on January 6, 2010. *Id.* Because EPA did not take final action on this reconsideration, the standard of 0.075 parts per millions remained in effect for purposes of final designations for the 2008 standard. *Id.* at 30,091. A settlement between EPA and WildEarth Guardians required EPA to issue its final designations by May 31, 2012. *Id.*

On September 22, 2011, EPA notified its Regional Air Division Directors that it was "proceeding with initial area designations under the 2008 [ozone] standard, starting with recommendations states made in 2009 and updating them with the most current, certified air quality data." TN Exhibit 2 at 1. EPA stated that in implementing the 2008 ozone standard, it would be "mindful of the President's and Administrator's direction that in these challenging economic times, EPA should reduce uncertainty and minimize the regulatory burdens on the States." *Id.*

Tennessee submitted certified air quality data based on the 2009-2011 monitoring period before the end of 2011. On December 8, 2011, EPA Region 4 notified Tennessee Governor Bill Haslam of its intended designations for Tennessee. *See* TN Exhibit 3. In this letter, EPA said that it had "preliminarily concluded that Shelby County, Tennessee should be included as part of the Memphis nonattainment area" and that it would "continue to work with State officials regarding the appropriate boundaries for Shelby County in the Memphis, TN-MS-AR Area." *Id.* at 2. EPA also said that Tennessee could submit additional information for use in making this boundary determination if it did so prior to February 29, 2012. *Id.*

By publication in the Federal Register on December 20, 2011, EPA announced a public comment period for its intended designations. *See* TN Exhibit 16. The public comment period ended on February 3, 2012. *Id.*

By letter dated February 27, 2012, Tennessee Department of Environment and Conservation Commissioner Bob Martineau amended recommendations for Shelby County, Tennessee, based on ambient air monitoring data from 2009-2011. *See* TN Exhibit 9. As explained in this letter, both monitors in Shelby County attained the 2008 ozone standard based on 2009-2011 data. *Id.* at 2. Thus, Commissioner Martineau recommended that Shelby County be designated attainment. *Id.* Regarding the area's one nonattaining monitor in Crittenden County, Arkansas, Commissioner Martineau recommended that Shelby County be found as not contributing to this monitor's violations because, due to prevailing wind patterns, "industries in Shelby County only infrequently impact the non-attaining monitor." *Id.* at 2. In the alternative, Commissioner Martineau recommended that EPA designate "only the Census tracts including the City of Memphis and not the whole county" as nonattainment for ozone. *Id.*

On February 1, 2012, Mississippi submitted certified air quality data based on the 2009-2011 monitoring period. *See* TN Exhibit 10.

Commissioner Martineau submitted amended recommendations again on April 5, 2012. *See* TN Exhibit 11. He reiterated that EPA should designate Shelby County attainment because "monitors in Shelby County demonstrate attainment with the 2008 standard based on 2009-2011 data." *Id.* at 2. He also noted that Arkansas's 2009-2011 data had "not yet been certified but has been quality assured and will be certified before official designations must be made." *Id.* at 3. He thus recommended that EPA use 2009-2011 data in making its final designations.

On April 17, 2012, Arkansas submitted its certified air quality data for the years 2009-2011. *See* TN Exhibit 12.

EPA announced its final designation of nonattainment for the entirety of Shelby County on April 30, 2012 (*see* TN Exhibit 21), a full month before the deadline for final designations and one day before states were required to submit their 2011 monitoring data for certification. *See* 40 C.F.R.§ 58.15(a)(2). In EPA's technical support document for the Memphis, TN-MS-AR designations, it notes that it based the designations on 2008-2010 data even though Tennessee and Mississippi had timely submitted certified 2011 data. EPA relied on the 2008-2010 data because "Arkansas did not provide its 2009-2011 monitoring data for EPA to use for designations. Thus the most recent full set of certified data for all portions of the Memphis, TN-MS-AR CBSA is for the 2008-2010 period." TN Exhibit 5 at 5.

EPA published the Final Rule on May 21, 2012, and Shelby County now petitions for reconsideration of the Final Rule due to EPA's arbitrary and capricious actions regarding the data sets used in making its final designations and for other reasons.

STATUTORY FRAMEWORK FOR PETITION

Under CAA Section 307, the EPA Administrator shall convene a proceeding for reconsideration of a rule if a person raising objection to that rule can demonstrate that it was impracticable to raise such objection during the period for public comment or "if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review)" and "if such objection is of central relevance to the outcome of the rule." 42 U.S.C. § 7607(d)(7)(B); TN Exhibit 14.

Here, the grounds for Shelby County's petition arose after the period for public comment and within the time specified for judicial review. As noted above, the public comment period for

the Final Rule expired on February 3, 2012. Shelby County bases this petition on the grounds that (1) EPA Regions acted inconsistently in making designations under the Final Rule; and (2) EPA Region 4 failed to use the most recent data available in designating Shelby County nonattainment.

The first ground did not arise until EPA published final designations for several counties in Illinois, Indiana, and Wisconsin on June 11, 2012. Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards for Several Counties in Illinois, Indiana, and Wisconsin; Corrections to Inadvertent Errors in Prior Designations. 77 Fed. Reg. 34,221 (June 11, 2012). *See* TN Exhibit 19. In this final rule, EPA notes that it "considered ozone monitoring data for the 2009-2011 period for Illinois and for the 2008-2010 period for Indiana and Wisconsin." *Id.* at 34,224. Likewise, the second ground did not arise until EPA engaged in "final agency action" by publishing the Final Rule on May 21, 2012. *See* TN Exhibit 18. Thus, both grounds arose after the Final Rule's public comment period expired on February 3, 2012.

CAA Section 307(b)(1) sets out the timeline for judicial review of EPA rules under the Clean Air Act. Pursuant to that section, a petition for review "shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register." 42 U.S.C. 7607(b)(1); TN Exhibit 14. Accordingly, both grounds arose prior to the end of this sixty-day period and thus arose within the time specified for judicial review. Shelby County has therefore timely filed this petition for review.

GROUNDS FOR RECONSIDERATION

Pursuant to CAA Section 307(d)(9), 42 U.S.C. § 7607(d)(9), Shelby County alleges that EPA, in its issuance of the Final Rule, acted arbitrarily, capriciously, in abuse of its discretion, and otherwise not in accordance with law.

I. EPA Acted Arbitrarily, Capriciously, and Otherwise Not in Accordance with Law by Using Inconsistent Data Sets in Making its Designations Under the 2008 Standard, Thereby Failing to Ensure Uniformity and Consistency Among its Regions.

The CAA's implementing regulations provide that "[i]t is EPA's policy to: (1) Assure fair and uniform application by all Regional Offices of the criteria, procedures, and policies employed in implementing and enforcing the act." 40 C.F.R. § 56.3(a). In furtherance of this policy, the regulations require EPA's Regional Administrators to "assure that actions taken under the act . . . [a]re as consistent as reasonably possible with the activities of other Regional Offices." *Id.* § 56.5(a)(3). Where EPA's Regions make inconsistent decisions, courts will find that they have acted arbitrarily. *See Catawba County v. EPA*, 571 F.3d 20, 51 (D.C. Cir. 2009) ("[T]he fact remains that [the petitioning county] would have been designated attainment if it had been in Region 1, but was designated nonattainment by EPA Region 2. Such inconsistent treatment is the hallmark of arbitrary agency action.")

Here, EPA invited Tennessee to submit certified 2011 air monitoring data by February 29, 2011, for its consideration in making final designations. *See* TN Exhibit 3 at 2. Tennessee timely submitted and certified that 2011 data for the purpose of EPA's consideration in making its final designations. EPA never stated that it would only consider timely submitted and certified 2011 data if *all three states* in the Memphis, TN-MS-AR area submitted and certified their data from 2011. Nonetheless, EPA failed to consider certified 2011 data from Tennessee and Mississippi (submitted by February 29, 2011) solely because "Arkansas did not provide its 2009-2011 monitoring data for EPA to use for designations. Thus, the most recent full set of certified data for all portions of the Memphis, TN-MS-AR CBSA is for the 2008-2010 period."

In contrast, EPA Region 5 did not decline to consider timely certified 2011 data from Illinois where Indiana and Wisconsin failed to certify their 2011 data. *See* TN Exhibit 6 at 5, 7.

Rather, EPA Region 5 made its Chicago-area designations on two sets of data: 2008-2010 data for Indiana and Wisconsin and 2009-2011 data for Illinois. *See* TN Exhibit 19 at 34,224. Had EPA Region 4 followed the same approach, Shelby County likely would have been designated attainment because no monitors in the county violated the 2008 standard in years 2009-2011. Thus, Shelby County faces the same situation as that of the petitioning county in *Catawba*: it was designated nonattainment by Region 4 but would have been designated attainment by Region 5. As the *Catwaba* court noted, such inconsistency is inherently arbitrary. It also violates EPA's mandate to assure consistency among its Regions. As such, EPA's inconsistent use of data sets in making its final ozone designations was unlawful, arbitrary, and capricious.

II. EPA Acted Arbitrarily, Capriciously, and Otherwise Not in Accordance with Law by Failing to Consider 2009-2011 Data in Violation of CAA Regulations and EPA Policies.

40 C.F.R. Part 50, Appendix P ("Appendix P"), provides that "[t]he primary and secondary [ozone] ambient air quality standards are met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average [ozone] concentration is less than or equal to 0.075." 40 C.F.R. Pt. 50, App. P § 2.3(a). This standard-related summary statistic "shall be computed using the three most recent, consecutive calendar years of monitoring data meeting the data completeness requirements." *Id.* § 2.2. Likewise, EPA's September 22, 2011 memorandum to Regional Air Division Directors states that "EPA is proceeding with initial area designations under the 2008 standard, starting with the recommendations states made in 2009 and updating them with the most current, certified air quality data." TN Exhibit 2. Nothing in Appendix P or in EPA's own correspondence states that EPA will only consider a state's certified 2011 data if all of the states in a multi-state region have

certified their 2011 data. Rather, EPA is required to - and commits itself to - using the most current air data available.

Here, Tennessee submitted the most recent possible certified data for designation purposes, 2009-2011. This data met all data completeness requirements and was timely certified. If EPA had considered this data, in accordance with the requirements Appendix P and EPA's own stated policy, it would have designated Shelby County attainment because its 3-year average of the fourth-highest daily maximum 8-hour average ozone concentration did not exceed 0.075.

In addition, nothing in the CAA or its implementing regulations requires EPA's designations to be based on "certified" data. In fact, EPA's guidance memorandum from May 15, 2009, states that once the deadline for data certification has passed, EPA "may move ahead and use both certified and uncertified data to propose and make designations or findings of attainment." Thus, even if EPA was required to use the same three-year data period for all three states in the Memphis area (which it was not), it had Arkansas's certified data by April 17, 2012, over a month before its designations were due. If EPA needed more time to consider Arkansas's data, it had two options: (1) it could have relied on Arkansas's uncertified data from 2011, because nothing in the CAA or its regulations requires designations to be based on certified data; or (2) it could have taken the same approach Region 5 did and delayed its designation decisions to allow proper consideration of Arkansas's certified 2011 data. Either way, EPA Region 4 should have made its designations based on 2009-2011 data. In that case, it would have designated Shelby County attainment because it had no violating monitors in that time period.

III. EPA Acted Arbitrarily, Capriciously, and Otherwise Not in Accordance with Law by Failing to Analyze Whether Shelby County Meaningfully Contributed to the Violating Monitor in Crittenden County, Arkansas.

EPA designated Shelby County nonattainment based on nonattaining monitoring data from 2008-2010. As described above, EPA should have instead based its designation on monitoring data from 2009-2011. In that case, EPA could have designated Shelby County nonattainment only if it found that Shelby County meaningfully contributed to the nonattaining monitor in Crittenden County Arkansas.[1] Thus, use of 2009 – 2011 data likely would change the outcome of Final Rule because EPA would need to analyze the contribution of Shelby County on the nonattaining Arkansas monitor.

As part of the ozone designation process, state governors must submit to the Administrator a list of all areas (or portions thereof) in the State and recommend each area as nonattainment, attainment, or unclassifiable. 42 U.S.C. § 7407(d)(1)(A); TN Exhibit 15. If the Administrator wishes to modify a governor's recommendations, it must provide 120 days for the governor to demonstrate why any proposed modification is inappropriate. *Id.* § 7407(d)(B)(ii). Through this process, state governors recommend initial boundaries for nonattainment areas and can make revised recommendations in response to EPA's modification of their initial recommendations. This analysis, performed on a case-by-case basis, allows EPA to "support nonattainment area boundaries that are larger or smaller than the presumptive area starting point." *See* Attachment 2 to EPA's Memorandum to Regional Administrators, "Area Designations for the 2008 Revised Ozone National Ambient Air Quality Standards," (Dec. 4, 2008), cited in TN Exhibit 5 at 1, n.1. To assist with this process for the 2008 ozone standard, EPA issued a memorandum identifying several factors states could consider in recommending

[1] *See* 42 U.S.C. § 7407(d)(i) (providing for nonattainment designations of "any area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the national primary or secondary ambient air quality standard").

nonattainment boundaries. The memorandum also provides that "a state's . . . demonstration supporting their boundary recommendation for an area should show that: 1) violations are not occurring in nearby portions that are excluded from the recommended area, and 2) the excluded nearby portions do not contain emissions sources that contribute meaningfully to the observed violations." *Id.*

Here, Tennessee demonstrated that Shelby County did not contribute meaningfully to the violations in Crittenden County, Arkansas. In the letter dated February 27, 2012, Commissioner Martineau recommended that Shelby County be designated attainment based on the following:

> Both monitors in Shelby County are attaining the standard based on 2009-2011 data. The only non-attaining monitor in the Memphis Metropolitan Statistical Area is in Crittenden County Arkansas, which is west of Shelby County. The winds in this region are primarily from the south, southwest, and south-southwest, indicating that industries in Shelby County only infrequently impact the non-attaining monitor.

TN Exhibit 9 at 2. In addition, Commissioner Martineau noted that:

> The western boundary of Shelby County is also the western boundary for the NOx SIP Call. Shelby County has faithfully been implementing the requirements of the NOx SIP Call and will implement whatever is required by the successor to the currently stayed Cross-State Air Pollution Rule. Two large power plants in the Arkansas counties just to the west of Shelby County are not subject to the NOx SIP Call and have done little to help the area attain. Modeling performed by EPA or its contractors shows that Arkansas contributes 7.034 parts per billion to ozone in Tennessee.

Id.

In further support of its recommendation, Tennessee performed a Nine-Factor Analysis on February 16, 2012, as incorporated in Attachment 2 to the February 27, 2012 letter. *Id.* This analysis correctly considered the potential NO_x contributors specifically to the Crittenden County monitor and concluded that electric generating units in Arkansas "could contribute to regional transport of NOx at the violating monitor" (*Id.*, Attachment at 2).

Because EPA erroneously used Shelby County's 2008-2010 data, it failed to consider Tennessee's arguments that Shelby County did not meaningfully contribute to the violating monitor in Crittenden County, Arkansas. As shown above, EPA acted arbitrarily, capriciously, and otherwise not in accordance with law in not basing Shelby County's designation on 2009-2011 data. Because Shelby County had no violating monitors in 2009-2011, EPA's nonattainment designation could have only been based on a demonstration that Shelby County meaningfully contributed to the nonattaining monitor in Crittenden County. This analysis is therefore determinative of a designation, and EPA's failure to perform such analysis is therefore of central relevance to the outcome of the Final Rule.

IV. EPA Acted Arbitrarily, Capriciously, and in Abuse of its Discretion in Failing to Consider Economic Growth, Job Creation, Predictability, and Regulatory Burden in Issuing the Final Rule.

Executive Order 13563 (January 18, 2011) requires regulatory agencies to consider regulatory approaches that promote economic growth, job creation, and predictability, while reducing uncertainty and using the "least burdensome tools for achieving regulatory ends." TN Exhibit 21 at 1. While the Final Rule states that it is exempt from this order, EPA expressly stated that it would be "mindful of the President's and Administrator's direction that in these challenging economic times, EPA should reduce uncertainty and minimize the regulatory burdens on the States." TN Exhibit at 2 at 1.

EPA cannot promote predictability and reduce uncertainty when, as described above, its Regions act inconsistently in choosing which three-year data period to use in making designations and in determining whether they will delay a designation determination while awaiting more current data. Further, EPA has performed modeling that indicates that the Memphis, TN-MS-AR area is likely to be in attainment with the 0.075 standard by 2014, even

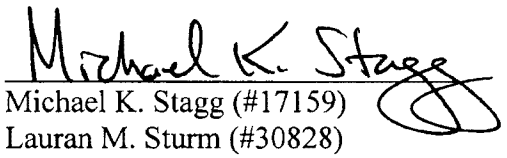
without additional local emissions reductions. *See* TN Petition at 9, n.2. If the Memphis area is likely to be in attainment in two years without additional local emission reduction efforts, it is highly burdensome for EPA to designate Shelby County as nonattainment now, particularly when, as shown above (1) no Shelby County monitors violated the standard in 2009-2011; and (2) EPA has not even demonstrated that Shelby County contributes meaningfully to the violating monitor in Crittenden County. This erroneous and burdensome nonattainment designation will only hinder economic growth and job creation in Shelby County, two considerations both the President and EPA have highlighted as priorities.

EPA has therefore acted arbitrarily, capriciously, and in abuse of its discretion in issuing the Final Rule without considering economic growth, job creation, predictability, uncertainty, and regulatory burdens.

CONCLUSION

EPA's promulgation of the Final Rule was arbitrary, capricious, and otherwise not in accordance with law because (1) EPA Regions acted inconsistently in selecting the data sets on which to base the designations in the Final Rule; (2) EPA failed to use the most recent data available in designating Shelby County as nonattainment for ozone; (3) EPA failed to consider the State of Tennessee's argument that Shelby County did not meaningfully contribute to violations in Crittenden County, Arkansas; and (4) EPA neglected the President's order to promote economic growth, job creation, and predictability while reducing uncertainty and the regulatory burdens on state and local governments. In all cases, EPA's actions were made after the Final Rule's public comment period expired on February 3, 2012, and within the relevant periods for judicial review. Shelby County's Petition for Reconsideration is proper and timely and EPA should grant the Petition.

Respectfully submitted and signed on this 20th day of July, 2012.



Michael K. Stagg (#17159)
Lauran M. Sturm (#30828)
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, TN 37219
(615) 244-6380

Attorneys for Shelby County, Tennessee