

US EPA ARCHIVE DOCUMENT

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Mark Williams, Commissioner

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July 20, 2012

VIA EMAIL AND U.S. MAIL

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 272-0167

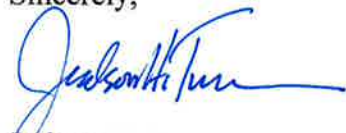
Re: Final Rule, Air Quality Designations for the 2008 Ozone National Ambient Air
Quality Standards, 77 Fed. Reg. 30088 (May 21, 2012)
Docket No. EPA-HQ-OAR-2008-0476
Georgia EPD's Petition for Reconsideration of the Final Rule

Dear Administrator Jackson:

Enclosed please find the Georgia Environmental Protection Division's ("EPD") Petition for Reconsideration of the United States Environmental Protection Agency's ("EPA") Final Rule, Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77 Fed. Reg. 30088 (May 21, 2012). EPD's petition articulates the reasons why it believes EPA should reconsider the rule as it applies to Georgia and details the harm that Georgia will suffer if the rule is implemented as currently promulgated.

We appreciate your consideration of this matter, and welcome the opportunity to discuss these issues further with EPA staff. Please contact the Chief of EPD's Air Protection Branch, Jac Capp, at 404-363-7016 or james.capp@dnr.state.ga.us if you have any questions or require further information.

Sincerely,



Judson H. Turner
Director

c: Scott Davis, EPA Region 4

Enclosure

**BEFORE THE ADMINISTRATOR OF
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

In Re:)	
)	
)	
Air Quality Designations for the 2008)	EPA Docket No.
Ozone National Ambient Air Quality)	
Standards, Final Rule, 77 Fed. Reg. 30088)	EPA-HQ-OAR-2008-0476
(May 21, 2012))	
)	

PETITION FOR RECONSIDERATION

Pursuant to 5 U.S.C. § 705 and 42 U.S.C. § 7607(d)(7)(B), the Georgia Environmental Protection Division petitions the Administrator of the United States Environmental Protection Agency for reconsideration of the Final Rule captioned above as it applies to the State of Georgia. The grounds for this Petition were impracticable to raise during or arose after the public comment period on EPA's December 8, 2011 Letter and Technical Support Document, Georgia – Area Designations for the 2008 Ozone National Ambient Air Quality Standards, and are of central relevance to the outcome of the Final Rule for Georgia. Because of the number and magnitude of the errors in the Final Rule, the Final Rule will impose unnecessary regulatory burdens and higher compliance costs on six counties in Georgia that will not materially impact the ability of the nine remaining counties to attain the 2008 Ozone National Ambient Air Quality Standard in a timely manner.

For these reasons, Georgia urges the Administrator to grant this Petition for reconsideration.

INTRODUCTION

On February 29, 2012, the Georgia Environmental Protection Division (“EPD”) submitted comments and a technical analysis in response to the United States Environmental Protection Agency’s (“EPA”) December 8, 2011 Letter and Technical Support Document, Georgia – Area Designations for the 2008 Ozone National Ambient Air Quality Standards, (referred to collectively herein as “EPA’s 2008 Preliminary Ozone Designations for Georgia”) that showed significant errors in EPA’s nonattainment designations for Georgia. Document I.D. No. EPA-HQ-OAR-2008-0476-0498. These comments and the technical analysis were in addition to and supplemented Georgia’s recommendations for areas to be designated as nonattainment for the 2008 Ozone National Ambient Air Quality Standard (the “2008 Ozone NAAQS”) submitted on October 25, 2011. Document I.D. No. EPA-HQ-OAR-2008-0476-0064.

In the Final Rule issued on May 21, 2012, EPA designated fifteen counties in Georgia for inclusion in the metropolitan Atlanta nonattainment area for the 2008 Ozone NAAQS. 77 Fed. Reg. at 30114.

REASONS TO RECONSIDER THE FINAL RULE

I. EPA Violated the Clean Air Act By Failing to Adequately Respond to Georgia's Comments and Extensive Technical Analysis.

EPA's Preliminary 2008 Ozone Designations for Georgia recommended that eighteen counties in the Atlanta-Sandy Springs-Gainesville, Georgia-Alabama Combined Statistical Area be designated as nonattainment for the 2008 Ozone NAAQS. Document I.D. No. EPA-HQ-OAR-2008-0476-0243. In response to these recommendations, EPD submitted comments and an extensive technical analysis, "Technical Analysis in Response to EPA's December 8, 2011 Preliminary Nonattainment Area Boundaries" (referred to herein as "EPD's Technical Analysis"), which followed EPA's five-factor analysis in the Technical Support Document for EPA's Preliminary 2008 Ozone Designations for Georgia. Document I.D. No. EPA-HQ-OAR-0476-0498. EPD's comments and Technical Analysis showed numerous errors in EPA's Preliminary 2008 Ozone Designations for Georgia, and that it is not "necessary" to designate more than four counties in Georgia (i.e., Cobb, DeKalb, Fulton and Henry that were monitoring nonattainment) as nonattainment for the 2008 Ozone NAAQS. Id.

Notwithstanding, in the Final Rule, EPA designated fifteen counties in Georgia (i.e., Bartow, Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Newton, Paulding and Rockdale) as nonattainment for the 2008 Ozone NAAQS. Without conceding that EPA's

designation of any additional counties beyond the four recommend by EPD as nonattainment for the 2008 Ozone NAAQS is correct, EPD is only petitioning to have six of those counties (i.e., Bartow, Cherokee, Fayette, Forsyth, Newton and Paulding) excluded from the Final Rule; the five remaining counties (i.e., Clayton, Coweta, Douglas, Gwinnett and Rockdale) would be included in the nonattainment area along with Cobb, DeKalb, Fulton and Henry counties. If these six counties are not excluded from the Final Rule, they will be subject to unnecessary and costly regulatory burdens for no appreciable air quality benefit.

The Clean Air Act (“Act”) requires that any rule promulgated by EPA pursuant to the Act “shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.” 42 USC 7607(d)(6)(B). With regard to the Final Rule, EPA violated this provision of the Act by failing to adequately respond to Georgia’s comments and extensive Technical Analysis. EPA addressed Georgia’s comments and 35-page Technical Analysis in less than five pages in its “Responses to Significant Comments on the State and Tribal Designation Recommendations for the 2008 Ozone National Ambient Air Quality Standards (NAAQS), April 2012,” and in fleeting references in the “Region 4 - Atlanta, Georgia Final Technical Support Document (TSD).” Document I.D. No. EPA-HQ-OAR-2008-0476-0675 at 38-42 and Document I.D. No. EPA-HQ-OAR-2008-

0476-0641, respectively. While EPA did respond (albeit inadequately) to some, but not all, of Georgia's comments, those responses include only passing references to the data in EPD's Technical Analysis. *Id.* Moreover, EPA did not respond at all to EPD's application of EPA's five-factor analysis in EPD's Technical Analysis. EPA failed to address how EPD's Technical Analysis was in error and/or how it did not comply with EPA's December 4, 2008 guidance memorandum "Area Designations for the 2008 Revised Ozone National Ambient Air Quality Standards."

II. EPA's Designation of the Six Counties as Nonattainment Without Determining Whether the Imposition of Regulatory Burdens and Compliance Costs in Those Counties Would Materially Benefit the Nonattainment Area's Ability to Comply With the 2008 Ozone NAAQS is Arbitrary and Capricious.

One of EPD's comments on EPA's Preliminary 2008 Ozone Nonattainment Designations for Georgia was that it is illogical given the heavy regulatory burdens and compliance costs to include additional counties that are not monitoring nonattainment as part of the 2008 Ozone NAAQS nonattainment area ("NAA"), unless their inclusion would materially benefit the nonattainment area's ability to attain the standard. Document I.D. No. EPA-HQ-OAR-2008-0476-0498 at 2-3. In response to that comment, EPA simply stated: "Nearby counties should be included as part of the NAA if the five-factor analysis supports that they contribute. Inclusion of any single county materially affects the ability of entire

area to comply.” Document I.D. No. EPA-HQ-OAR-2008-0476-0675 at 40. Such response is inadequate, unsupported and contains circular reasoning. Most importantly, it shows that EPA’s inclusion of the six counties in the nonattainment area was arbitrary and capricious.

CONCLUSION AND RELIEF REQUESTED

The Final Rule contains numerous errors that have a material and detrimental effect on a number of counties in Georgia. EPA violated the Clean Air Act by failing to adequately respond to EPD’s comments and extensive Technical Analysis of these errors in EPA’s Preliminary 2008 Ozone Designations for Georgia. In addition, EPA’s inclusion of six counties in Georgia’s nonattainment area for the 2008 Ozone NAAQS without determining whether their inclusion would materially benefit the nonattainment area’s ability to attain the standard is arbitrary and capricious. For these reasons, Georgia requests the Administrator of EPA to reconsider the Final Rule as it applies to Georgia.

Respectfully submitted this 20th day of July, 2012.



JUDSON H. TURNER
Director

Environmental Protection Division
Department of Natural Resources
State of Georgia