

US EPA ARCHIVE DOCUMENT

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

In the Matter of: Final Rule Published at 77 Fed. Reg. 30,088 (May 21, 2012),
entitled “Air Quality Designations for the 2008 Ozone National Ambient Air
Quality Standards” Docket No. EPA-HQ-OAR-2008-0476

PETITION FOR RECONSIDERATION

Pursuant to Section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. § 7607(d)(7)(B), the Sierra Club petitions the Administrator of the Environmental Protection Agency (“the Administrator” or “EPA”) to reconsider the final rule referenced above (“final rule” or “rule”). According to EPA, the grounds for the objections raised in this petition arose after the period for public comment and are of central relevance to the outcome of the rule. The Administrator must therefore “convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed.” 42 U.S.C. § 7607(d)(7)(B).

I. THE PETITION IS TIMELY AND APPROPRIATE

This petition raises objections to the final rule captioned above. Each objection is “of central relevance to the outcome of the rule,” 42 U.S.C. § 7607(d)(7)(B), in that it demonstrates that the rule is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” *Id.* § 7607(d)(9)(A). With respect to each objection, moreover, EPA may take the position that they first appeared after the final rule was signed on April 30, 2012. The grounds for the objections raised in this petition thus “arose after the period for public comment[]” according to EPA’s position on the availability of 2011 ambient monitoring data. *See* 42 U.S.C. § 7607(d)(7)(B). Because judicial review of the rule is available by the filing of a petition for review by July 20, 2012, and the 2011 ambient monitoring data became certified by no later than May 1, 2012, the grounds for the objections arose “within the time specified for judicial review.” *Id.*

II. EPA MUST DESIGNATE THE AREAS LISTED IN TABLE 1, BELOW, AS NONATTAINMENT FOR THE 2008 OZONE NAAQS

The following counties and parishes listed in Table 1 have design values greater than 0.075 parts per million based on **certified** 2009 – 2011 ambient monitoring data in EPA’s own Air Quality System (AQS) as accessed through EPA’s AirData webpage. Available at: http://www.epa.gov/airdata/ad_rep_mon.html and incorporated herein by reference.

TABLE 1

County or Parish	Combined Statistical Area	Metropolitan/Micropolitan Statistical Area	Air Monitor ID	2009-2011 Design Value based on 7/20/12 Air Data (ppm)
Montgomery County, OH	Dayton-Springfield-Greenville, OH	Dayton, OH	391130037	0.076
Macomb County, MI	Detroit-Warren-Flint, MI	Detroit-Warren-Livonia, MI	260991003	0.076
Wayne County, MI	Detroit-Warren-Flint, MI	Detroit-Warren-Livonia, MI	261630019	0.078
Allegan County, MI	Grand Rapids-Muskegon-Holland, MI	Allegan, MI	260050003	0.078
Muskegon County, MI	Grand Rapids-Muskegon-Holland, MI	Muskegon-Norton Shores, MI	261210039	0.076
Clinton County, MO	Kansas City-Overland Park-Kansas City, MO-KS	Kansas City, MO-KS	290490001	0.076
Gregg County, TX	Longview-Marshall, TX	Longview, TX	481830001	0.077
Jefferson County, KY	Louisville/Jefferson County-Elizabethtown-Scottsburg, KY-IN	Louisville-Jefferson County, KY-IN	211110051	0.078
Oldham County, KY	Louisville/Jefferson County-Elizabethtown-Scottsburg, KY-IN	Louisville-Jefferson County, KY-IN	211850004	0.078
Jefferson Parish, LA	New Orleans-Metairie-Bogalusa, LA	New Orleans-Metairie-Kenner, LA	220511001	0.076

Oklahoma County, OK	Oklahoma City-Shawnee, OK	Oklahoma City, OK	401091037	0.077
Bossier Parish, LA	Shreveport-Bossier City-Minden, LA	Shreveport-Bossier City, LA	220150008	0.08
Tulsa County, OK	Tulsa-Bartlesville, OK	Tulsa, OK	401430137	0.077
Jefferson County, TX	N/A	Beaumont-Port Arthur, TX	482450011	0.076
			482450101	0.079
Manitowoc County, WI	N/A	Manitowoc, WI	550710007	0.077*

*Air Monitoring values downloaded from Air Data on 7/20/12 resulted in a design value different (higher) than data downloaded in February 2012.

Not surprisingly, the design values for these counties and parishes for 2009 – 2011 based on the “certified” data are the same, with one minor exception which does not change the conclusion, design values as identified in our February 3, 2012 comment letter based on the data before it was “certified” which is already in the docket and incorporated herein by reference. The 2011 data became officially certified no later than May 1, 2012, which was after the Administrator signed the final rule making the designations.¹ Therefore, EPA should reconsider its final rule and designate the above listed counties nonattainment based on 2009 – 2011 “certified” monitoring data, which is the most recent data available. 2009 – 2011 data has the added advantage of being less biased by the Great Recession, as compared to 2008 – 2010 data. Using the most recent, least biased data would be consistent with Administrator Jackson’s promise to have her EPA administration make decisions based on sound science.

EPA should not only designate the above counties nonattainment, it should also designate the combined statistical areas (CSA) or at least the metropolitan or micropolitan statistical areas (MSA) in which these counties are found nonattainment. This would be consistent with EPA’s past practice and is important to address parts of the ozone problem such as mobile sources. We are not aware of any reason why the whole above listed CSAs or MSAs should not be listed as nonattainment.

As explained above, the 2009 – 2011 data is now certified so EPA’s previous concern of using non-certified data is no longer present. In addition, EPA can give states an opportunity to comment on whether these areas should be designed nonattainment to address any concerns about not providing states the opportunity to review the 2011 data. Of course, this concern is arbitrary in that the data came from the states so they are well aware of it. Furthermore, EPA has

¹ We note that EPA could have signed the final rule on May 2, 2012, after the data was certified but for some reason which EPA has yet to explain, it chose to sign the rule making the designations the day before the 2011 monitoring data was certified. *See WildEarth Guardians v. Jackson* (D. Ariz. No. 2:11-CV-1661) (Consent Decree [Dk.#22] Ordering EPA to sign final rule making designations by May 31, 2012, not April 30, 2012).

made designations based on post 120-day notice process information or considerations in the past. Nevertheless, as we just said, EPA can give states an opportunity to review and comment on EPA's recommendation to designate the above areas nonattainment based on the 2009-2011 data if EPA believes that is necessary.

IV. CONCLUSION

Therefore, for the reasons explained above, EPA must reconsider the final rule and designate the CSAs and MSAs listed in Table 1 nonattainment.

Respectfully submitted,



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