

US EPA ARCHIVE DOCUMENT



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 14 2012

THE ADMINISTRATOR

The Honorable Jim DeMint
United States Senate
Washington, D.C. 20510

Dear Senator DeMint:

I am pleased to respond to your July 19, 2012, letter in which you, Senator Lindsey Graham and Congressman Mick Mulvaney filed a petition for reconsideration concerning the U.S. Environmental Protection Agency's final rule, "Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards." See *77 Federal Register* 30008 (May 21, 2012). The petition requests that the EPA reconsider the nonattainment designation of the eastern part of York County, SC, as part of the Charlotte-Rock Hill, NC-SC ozone nonattainment area.

The EPA has carefully evaluated the issues and information in your petition. For the reasons explained in the EPA's final designation action and information provided in the enclosure, the EPA is denying your petition. The EPA continues to believe the above mentioned eastern portion of York County is properly designated nonattainment because of its contribution to ozone nonattainment in the bi-state Charlotte area.

The enclosure addresses the issues raised in your petition. Along with the information provided in the EPA's final designation action, this enclosure provides the basis for the EPA's denial of your petition for reconsideration. The EPA considers the designation of nonattainment areas with appropriate boundaries to be an important step in implementing the 2008 ozone standards.

Thank you for your interest in this issue. If you have further questions please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson".

Lisa P. Jackson

Enclosure

Enclosure

The EPA Response to Petition for Reconsideration from Senator Lindsey Graham, Senator Jim DeMint and Representative Mick Mulvaney

By letter dated July 19, 2012, Senator Lindsey Graham, Senator Jim DeMint and Representative Mick Mulvaney petitioned the EPA to reconsider the final area designation for a portion of York County, South Carolina in the Charlotte – Rock Hill, NC-SC ozone nonattainment area. For the reasons discussed below, the EPA is denying the Petition. For the sake of clarity, we have organized this response according to the structure of the July 19, 2012, petition.

Issue: The Petitioners claim that current data continues to show that ozone concentrations at the York monitor are trending downward and are well below the 2008 ozone standard. Further, the Petitioners point to the Department of Health and Environmental Control (DHEC)'s analysis, including its back trajectory and air monitoring data from the York County monitor as evidence that the designation should be reconsidered because it "indicates that emissions from Charlotte, not emissions from eastern York County, are impacting the Charlotte area monitors." The Petitioners state that "EPA should strongly consider this scientific evidence when making this important determination...[f]urthermore, this designation decision is based on an inconsistent application of the factors used to determine designations. The EPA should consistently apply its rationale for this and any future decision." (Petition at page 1).

Response: As explained in detail in the EPA's final designation action and associated technical support document (TSD), the EPA did consider the DHEC analysis for this area, including its back trajectory and all air monitoring data, including ozone concentration data from the York County monitor, in its determination that a portion of York County, South Carolina contributes to violating monitors in the Charlotte-Gastonia-Salisbury combined statistical area (CSA). On page 15 of the TSD, the EPA states that North Carolina's interpretation of the meteorological data, including back trajectories, is consistent with the EPA's assessment of the entire Charlotte area and that the Agency agrees with some but not all of South Carolina's meteorological data interpretation. The EPA, however, went on to state that "nothing provided by South Carolina conclusively precludes transport of emissions from York County. Therefore, York County cannot be ruled out as a potential contributor to ozone violations at monitors in the Charlotte-Gastonia-Salisbury CSA [Combined Statistical Area]." The Petitioners make a conclusory statement that the EPA's decision was based on an inconsistent application of the factors, but do not provide any support for that statement. The EPA provided its basis for including a portion of York County in the Charlotte – Rock Hill, NC-SC nonattainment area in the EPA's TSD and in the Response to Comments document, and we continue to believe that our application of the factors for this area is consistent with how the factors were considered and applied in other areas. In brief, York County is among those in the area that have the highest NO_x and VOC emissions, and meteorological information supports a conclusion that emissions from the county contribute to ozone violations in the area.

Issue: The Petitioners describe DHEC and York County's ongoing efforts towards improving air quality and claim that these stakeholders have had a positive impact on public health and the environment. Petitioners also claim that "[t]he proposed EPA designation for violations not present in York County may discourage future stakeholder involvement." (Petition page 1)

Response: The EPA appreciates that DHEC and York County have implemented programs reducing precursors to ozone formation that have had a positive impact on public health and the environment. The Clean Air Act (CAA) requires the EPA to designate as nonattainment any area that is violating the national ambient air quality standards (NAAQS) and any area that is contributing to air quality in a

nearby area that is violating the NAAQS. CAA section 107(d)(1)(A)(i). The portion of York County that was designated as part of the Charlotte – Rock Hill, NC-SC nonattainment area was included due to York County’s contribution to violating monitors in the Charlotte-Gastonia-Salisbury CSA. Designation of an area based upon its contribution to a violating monitor is consistent with the EPA’s obligations under the CAA and reflects that efforts are needed from stakeholders in both North Carolina and South Carolina to reduce ozone precursors that are causing levels of ozone above the standard to be measured at any monitor in the Charlotte-Gastonia-Salisbury CSA.

Issue: The Petitioners claim that “[a] nonattainment designation would not bring significant environmental benefits... would not require any further review, controls, or implementation of emission reductions in York County... [and that there] are no significant environmental benefits, associated with the EPA’s action....” The Petitioners go on to claim that the designation is burdensome and “would have unnecessary economic impacts.” They cite President Obama’s Executive Order 13563 stating that “federal agencies should consider the costs and benefits of regulations.” The Petitioners would like the EPA and the states to work together “to allow a common sense approach that adequately addresses air quality using the most recent air quality data. This is especially important given the fact that the EPA is expected to release a revised ozone [National Ambient Air Quality Standards (NAAQS)] in 2013.” Finally, Petitioners claim they are concerned the nonattainment designation will “disproportionately harm South Carolina’s economy without guaranteeing effective improvements to air quality.”

Response: With respect to the Petitioners’ concerns related to the economic impacts associated with the designation for this portion of York County, South Carolina, this issue was raised during the comment period and addressed by the EPA and thus is not an appropriate basis for reconsideration. The EPA addressed the issue in the Response to Comments at pages 14-15 where the EPA stated that:

“In determining whether an area should be designated nonattainment, EPA did not consider economic impacts because that is not relevant for determining whether an included area is violating the NAAQS or is a nearby area that is contributing to a violation as provided under CAA section 107(d). The implementation rulemaking for the 2008 ozone NAAQS will address the control obligations for areas designated nonattainment. As EPA considers the required elements of implementation for the 2008 ozone NAAQS, it is our goal to propose approaches that provide flexibility and opportunity for efficiency to the extent such approaches are consistent with the CAA and will not jeopardize expeditious attainment of the public health and welfare goals of the CAA. In addition, we are exploring ways in which the EPA could provide assistance to the states. Finally, to the extent the CAA does not mandate specific control measures, states may consider economic concerns in development of their state implementation plans to address air quality.”