

US EPA ARCHIVE DOCUMENT



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 14 2012

Mr. Judson H. Turner  
Director  
Georgia Department of Natural Resources  
Environmental Protection Division  
2 Martin Luther King Jr. Drive, SE, Suite 1152 East  
Atlanta, Georgia 30334-4100

Dear Mr. Turner:

I am pleased to respond to your July 20, 2012, letter in which you filed a petition for reconsideration on behalf of the Georgia Environmental Protection Division 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 for Bartow, Cherokee, Fayette, Forsyth, Newton and Paulding counties in Georgia as part of the Atlanta 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 that Bartow, Cherokee, Fayette, Forsyth, Newton and Paulding counties are properly designated nonattainment because of their contribution to ozone nonattainment in the Atlanta 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.

We appreciate the action you have taken in Georgia to reduce ozone levels and provide cleaner, healthier air for millions of people. Please know that we look forward to working with the you to ensure achievement of the 2008 ozone standards in the Atlanta area.

In the meantime, I thank you for your interest in protecting the quality of our environment.

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 Judson H. Turner, Director of Georgia Department of Natural Resources Environmental Protection Division**

By letter dated July 20, 2012, the Georgia Environmental Protection Division (GA EPD) petitioned the EPA to reconsider the final area designation for Bartow, Cherokee, Fayette, Forsyth, Newton and Paulding Counties in the Atlanta, GA 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 20, 2012, petition.

#### **I. Response to Comments and Review of Technical Analysis**

Issue: The Petitioner claims that the EPA failed to adequately respond to at least some of Georgia's comments provided in its February 29, 2012, letter. In addition the Petitioner claims that the EPA did not respond at all to the "Technical Analysis in Response to EPA's December 8, 2011 Preliminary Nonattainment Area Boundaries" (EPD's Technical Analysis), which they submitted to the EPA on February 29, 2012, with the GA EPD letter. Additionally, the Petitioner claims that the EPA failed to address how EPD's Technical Analysis was in error and/or how it did not comply with the designation guidance.

Response: The Petitioner makes only a general claim that the EPA did not address its analyses or respond to its comments, and we believe that the record fully supports our nonattainment designation decision. Accordingly, we do not believe this is a basis for reconsideration. Nevertheless, the EPA did fully consider Georgia's comments and technical information and, in fact, after a full evaluation agreed with Georgia that 3 of the 18 counties it originally recommended for nonattainment be excluded from the final designation. The EPA TSD provides the EPA's assessment of the five factors for this area. To the extent that Georgia's five factor assessment differs from that of the EPA's analysis, the TSD provides sufficient notice to the Petitioner as to where the EPA disagrees with its five factor analysis. In addition, as acknowledged by the Petitioner, the EPA addressed the comments included with Georgia's February 29, 2012, letter<sup>1</sup> in Section 3.1.5 on page 14 and on pages 38 through 42 of the EPA's "Responses to Significant Comments on the State and Tribal Designation Recommendations for the 2008 Ozone National Ambient Air Quality Standards (NAAQS), April 2012" (Response to Comments) and in the "Region 4 Atlanta, GA Final Technical Support Document (TSD)."

In addition, on page 4 of the TSD we said "[a]fter considering Georgia's recommendation and additional technical information, and based on EPA's reevaluation of the 18 counties as described below, the EPA is designating 15 counties in Georgia as "nonattainment" for the 2008 ozone NAAQS as part of the Atlanta, GA nonattainment area." We also addressed this information in several other places in the record.

The EPA also considered EPD's Technical Analysis during the designation process but concluded that 15 counties should be included in the nonattainment area including Bartow, Cherokee, Fayette, Forsyth, Newton and Paulding Counties and provided our basis for that decision throughout the TSD, addressing each of the five factors. For the reasons provided in the TSD and as supported by the Response to

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<sup>1</sup>The EPA notes that Petitioner claims that the Agency neglected to respond to some of Georgia's comments but failed to provide any specificity as to which comments the EPA allegedly failed to respond. As such, the EPA is unable to respond to this claim.

Comments document, the EPA determined that 11 counties in addition to the four recommended by the state contribute to violations of the 2008 ozone NAAQS in the combined statistical area. Based on our consideration of Georgia's additional technical information provided after the release of the agency's preliminary boundary determination in December 2011, and other information, the EPA determined that the originally proposed 18 county nonattainment area was appropriately reduced to the 15 county area that was ultimately designated nonattainment.

## II. Economic Considerations

Issue: The Petitioner claims that in designating Bartow, Cherokee, Fayette, Forsyth, Newton and Paulding Counties nonattainment the EPA failed to consider 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. In addition the Petitioner also claims that the EPA's response to its comment regarding regulatory burdens and compliance costs of including additional counties that are not monitoring nonattainment was "inadequate, unsupported and contains circular reasoning."

Response: This issue was raised during the comment period and was responded to by the EPA. Thus it is not a proper basis for reconsideration. Furthermore, the Petitioner fails to provide a basis for its claim that the EPA's response is "inadequate, unsupported and contains circular reasoning." However, we note that on page 39 of the EPA's Response to Comments document we state, "We do not believe that regulatory burden or compliance costs are pertinent considerations in determining whether an area is violating the NAAQS or contributing to a nearby violation of the NAAQS." Under section 107(d) of the Clean Air Act (CAA), the EPA is required to designate as nonattainment an area that is violating a new or revised NAAQS or that contributes to a nearby violation. . . . In determining whether an area should be designated nonattainment, the EPA does 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). As such, the criteria for designations in Section 107 of the CAA do not provide for the EPA to consider economic effects. We intend for the implementation rulemaking for the 2008 ozone NAAQS to address the minimum planning and emissions control obligations for areas designated nonattainment. As the 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. 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. Finally, we note that Atlanta counties designated nonattainment have continued to grow despite their previous nonattainment designations (*see* TSD page 8, Table 5).