

US EPA ARCHIVE DOCUMENT



THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

DEC 14 2012

Mr. Michael K. Stagg
Waller Lansden Dortch & Davis, LLP
511 Union Street, Suite 2700
Nashville, Tennessee 37219

Dear Mr. Stagg:

I am pleased to respond to your July 20, 2012, letter in which you filed a petition for reconsideration on behalf of Anderson County, Blount County and Knox County, Tenn., 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 2008 ozone nonattainment designation for a portion of Anderson County, all of Knox County and all of Blount County, Tenn. You filed a supplemental petition for reconsideration October 16, 2012, on behalf of Anderson, Blount and Knox counties, which provides additional technical analysis that you assert supports the arguments set forth in your petition.

The EPA has carefully evaluated the issues and information in your petition and supplemental petition. For the reasons explained in the EPA's final designation action and information provided in the enclosure, the EPA is denying your petition and supplemental petition. The EPA continues to believe that the portion of Anderson, Blount and Knox counties are properly designated nonattainment because of their contribution to ozone nonattainment in the Knoxville, Tenn., ozone nonattainment area.

The enclosure addresses the issues raised in your petition and supplemental 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 actions you have taken in Tennessee to reduce ozone levels and provide cleaner, healthier air for millions of people. We look forward to working with you to ensure achievement of the 2008 ozone standards in the Knoxville, Tenn., 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", written over a printed name.

Lisa P. Jackson

Enclosure

Enclosure

The EPA Response to Petition for Reconsideration from Anderson County, Blount County and Knox County, Tennessee

By letter dated July 20, 2012, the firm of Waller, Lansden, Dortch & Davis, LLP, on behalf of Anderson County, Blount County and Knox County, Tennessee, (hereafter collectively referred to as “the Counties”), petitioned the EPA to reconsider the final area designation for Anderson County, Blount County and Knox County in the Knoxville, TN ozone nonattainment area. Also, on October 16, 2012, Waller, Lansden, Dortch & Davis, LLP, on behalf of the Counties, sent the EPA, via email, a supplement to the July 20, 2012, Petition. For the reasons provided 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. General “Grounds for Reconsideration”

Issue: The Petitioner claims that the “EPA failed to consider a boundary recommendation analysis submitted by the State of Tennessee and the Counties...” which was submitted following the close of the public comment period associated with the EPA’s proposed boundary determinations. Petitioner claims that the Clean Air Act (Act) affords states the right to resubmit boundary recommendations after the EPA announces an intent to modify the states’ initial boundary recommendations. Petitioners claim that because the EPA announced a proposed boundary determination in December of 2011, which was different from the boundaries recommended by the state earlier that year, the EPA should have considered the April 2012, reanalysis submitted by the state (and the Counties). Petition at 1-6.

Response: The EPA did consider all boundary recommendation analyses submitted by the state (and the Counties) including the April 2012 submittal. The EPA references this recommendation along with the other recommendations received for this Area in the EPA’s final Knoxville technical support document (TSD) on pages 4-5. As explained in the TSD, the EPA’s analysis of the initial recommendation of the state “begins with the CSA [Combined Statistical Area] or CBSA [Core Based Statistical Area] areas for purposes of evaluating what areas violate and or contribute to a nearby violation of the ozone NAAQS [National Ambient Air Quality Standards].” That analysis was provided to the state in a December 2011 letter providing how the EPA intended to modify the state’s recommendation. As part of the EPA’s analysis for the final TSD, the EPA “refined the evaluation made available to... [Tennessee] in December 2011 by considering additional technical information provided by the states and tribes. After considering the information available to us for the Knoxville, TN area, the EPA is designating two entire counties and one partial county in Tennessee...as ‘nonattainment’ for the 2008 ozone NAAQS as part of the Knoxville, TN nonattainment area.” Further, the EPA discussed the April 2012 submittal in other parts of the TSD. *See, e.g.*, TSD at Page 11. The April 2012 reanalysis submitted by the state and the Counties can also be found in the docket for the EPA’s final designations *Federal Register* action.

II. Factor by Factor “Grounds for Reconsideration”

The five factor analysis section of the Petition consists entirely of direct excerpts from an April 5, 2012, letter from Waller, Lansden, Dortch & Davis, LLP, on behalf of Anderson County, Blount County and Knox County, TN, to the EPA Region 4 Regional Administrator. The letter was sent to the EPA via email from the Tennessee Department of Environment and Conservation (TDEC). The EPA considered

the contents of the April 5, 2012, submittal in the EPA's designation analysis and the Agency's response to this information is provided in the EPA's Knoxville, TN TSD for the final designations. Because these issues were raised and addressed by the EPA during the designation process in the final TSD, they do not provide a basis for reconsideration.

III. Supplemental Petition for Reconsideration

In addition to the July 20, 2012, Petition described above, the EPA received a "Supplemental Petition" on October 16, 2012, from the Petitioner that addresses the EPA's final designation for the Knoxville, TN Area. The Supplemental Petition raises the following issues:

- I. Additional Comments on the EPA's Technical Analysis of the Knoxville CSA
- II. An Analysis of High-Ozone Events at Look Rock Based on What is Known from Extensive Monitoring and Research
- III. The Counties' Analysis of Each High-Ozone Event
- IV. CSAPR and 2008 Standard Modeling

In response to paragraphs 4 and 5 of Section I of the Supplemental Petition, the EPA notes these claims are based upon the submission of additional technical information regarding the Knoxville nonattainment designation which was available prior to EPA's May 21, 2012, final designation. For example the Petitioner presents detailed technical arguments regarding local measurements of wind direction at the Look Rock CASTNET monitor and information from the airport. The Petitioner had the opportunity during the public comment period to provide such information. Additionally, the Petitioner could have provided this information to the State to consider and provide as a part of the State's recommendation and technical support information. The Petitioner, however, did not provide this information prior to the EPA's final designations, and as such, these claims do not provide an appropriate basis for reconsideration. In response to the remaining portions of Supplemental Petition Section I, regarding the Counties' April 5, 2012, submittal, the EPA notes that this information was submitted following the EPA's recommended designation and prior to issuance of the final designation and the EPA has previously considered these points. *See* the EPA's response in the TSD. TSD at 12-15.

In response to Section II of the Supplemental Petition, the EPA notes that these claims are based upon technical information regarding the Knoxville nonattainment designation that was available prior to April 30, 2012, when the Administrator signed the final designations rule, but was not provided to EPA. For example the Petitioner presents detailed technical argument regarding meteorological data related to the Look Rock CASTNET monitor and wind patterns. The Petitioner had the opportunity during the public comment period, and through the state, the opportunity prior to the EPA's final designation, to provide such information to the Agency for consideration. The Petitioner, however, did not provide this information prior to the EPA's final designations, and as such, the EPA these claims do not provide an appropriate basis for reconsideration.

In addition, the EPA notes that the claims found in paragraphs 10 and 11 of Section II of the Supplemental Petition are based upon new technical analyses of data that existed prior to the EPA's final designation. While the data existed prior to designations and could have been analyzed during the designation process, the analysis and conclusions provided in the Petition did not exist prior to the final designation. For example Section II refers to an analysis of the HYSPLIT back trajectory¹ conducted on October 10, 2012, and a Cluster Analysis conducted in September 2012. As noted above, the underlying

¹ Based upon data from 2009 through 2011.

data existed prior to the EPA's designation. The new analyses relied on by the Petitioner are also not an appropriate basis for reconsideration.

In response to Section III of the Supplemental Petition, the EPA notes that these claims are based upon new technical analyses of data that existed prior to the EPA's final designation. While the data existed prior to designations and could have been analyzed during the designation process, the analyses were presented to the EPA for the first time as part of the Supplemental Petition and, to the EPA's knowledge did not exist prior to the final designations. For example, Section III refers to a new analysis that was conducted by the counties using the photochemical age of the air mass. To the extent that the analyses relied on by the Petitioner provide new technical information not available to the EPA at the time it issued the designation, such new information is not an appropriate basis for reconsideration.

With regard to the information provided in Section II and Section III of the Petition to the extent that it contains new information, we do not agree that technical information that was not available in time for the EPA to consider while complying with the procedural requirements of the Act provides an appropriate basis for reconsidering the designations. As noted by the Court in *Catawba v. EPA*, 571 F.3d 20 at 23 "Congress imposed deadlines on EPA and thus clearly envisioned an end to the designation process." It is important that states are able to rely on the completed designations and to move forward with the planning now required for the area to achieve healthier air.

In response to Section IV of the Supplemental Petition, the EPA notes that these claims each contain additional technical information regarding the Knoxville nonattainment designation which was available prior to April 30, 2012, the date the Administrator signed the final designations. For example the Petition presents the EPA's 2011 conclusions regarding the CSAPR modeling and claims that the EPA should not have included the counties at issue in the nonattainment area because the Area is predicted to attain the standard by 2015 without the adoption of additional local controls. The EPA notes that the Petitioner had the opportunity during the public comment period, and through the state, the opportunity prior to the EPA's final designation, to provide such information. The Petitioner, however, did not provide this information prior to the EPA's final designations, and as such, this information does not provide an appropriate basis for reconsideration. The EPA also notes as a general matter that the issue of attainment without the need for additional local controls was raised in the context of other areas and addressed by the EPA in the Response to Comments. *See e.g.*, Response to Comments at 14-15, 39-40.