

**BEFORE THE
STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

IN THE MATTER of Redesignating the)
Counties of Kenosha, Racine, Milwaukee,)
Ozaukee Washington, and Waukesha, to)
Attainment of the One-Hour Ozone Ambient)
Air Quality Standard)

**PRELIMINARY FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DECISION**

FINDINGS OF FACT

The Department of Natural Resources, hereinafter DNR, finds that:

1. The primary and secondary ambient air quality standards for ozone are set forth in s. NR 404.04(5), Wis. Adm. Code, and are specific levels of air quality which are deemed necessary to provide adequate protection for public health and welfare.
2. Section NR 404.04(5), Wis. Adm. Code, establishes the primary and secondary ambient air quality standards for the 1-hour ozone standard at 0.12 parts per million (ppm; 235 micrograms per cubic meter) measured as the maximum hourly average concentration. The 1-hour ozone standard is attained at a site when the expected number of days per calendar year with maximum hourly average concentrations above the designated level (0.12 ppm) is equal to or less than one as determined by the methodology of part 40 of the Code of Federal Regulations (CFR), Appendix H. The State 1-hour ozone ambient air quality standards are identical to the previous federal 1-hour ozone national ambient air quality standards (NAAQS).
3. In 1991, as required by the 1990 Clean Air Act Amendments, USEPA identified all areas violating the 1-hour ozone as of November 6, 1991, as nonattainment areas, U.S. (56 FR 56850). For Wisconsin, USEPA designated and classified the counties of Kenosha, Racine, Milwaukee, Waukesha, Ozaukee and Washington as severe nonattainment; Sheboygan County as serious nonattainment; the counties of Manitowoc and Kewaunee as moderate nonattainment; Walworth County as marginal nonattainment; and Door County as rural transport (marginal) nonattainment. In 1992, USEPA reclassified Sheboygan County to moderate nonattainment.
4. The DNR proposed to designate the same 11 counties designated by USEPA on November 6, 1991 to nonattainment for planning purposes under s. 144.371, Stats., and ch. NR 401, Wis. Adm. Code. The DNR held hearings on January 12, 1993 in Sheboygan and January 13, 1993 in Milwaukee. After reviewing and

- addressing the comments from these hearings and the associated public comment period, the DNR then issued a decision dated August 14, 1993 designating all 11 counties as ozone nonattainment areas for state purposes.
5. Subsequently, in 1996, USEPA redesignated the counties of Walworth, Kewaunee and Sheboygan to attainment of the one-hour ozone standard. In 2003, USEPA redesignated Manitowoc and Door Counties to attainment of the one-hour ozone standard.
 6. The DNR previously proposed redesignation of the Milwaukee-Racine area (Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha Counties) to attainment of the one-hour standard based on the 1999 – 2001 monitoring data. The area subsequently measured a violation for the period 2000- 2002 and was not redesignated to attainment.
 7. On June 15, 2005 the United States Environmental Protection Agency (USEPA) revoked the 1-hour ambient air quality standard for ozone for all areas of the nation, except the 8-hour ozone nonattainment Early Action Compact Areas. USEPA retained the former 1-hour ozone designations and classifications as of June 15, 2004 in subpart C of 40 CFR Part 81 solely for purposes of the anti-backsliding provisions of 40CFR 51.905. In a series of federal Circuit Court decisions (South Coast Air Quality vs EPA, Docket 04-1200 U.S. Ct. of App. (D.C. Circ.) on December 22, 2006 and June 8, 2007) USEPA was directed to expand the scope of the anti-backsliding provisions in Section 172(e) of the Clean Air Act, 42 USC 7502(e), that applied to areas not meeting the 1-hour standard. The court's ruling requires that states implement Clean Air Act provisions for severe or extreme 1-hour ozone nonattainment areas including new source review, section 185 penalty provisions, rate of progress milestones, conformity demonstrations and attainment contingency plans in 1-hour ozone nonattainment areas. The decision impacts the Milwaukee-Racine 1-hour severe nonattainment area.
 8. Based on 2003 through 2005 monitoring data, the Milwaukee-Racine ozone nonattainment area again attained the 1-hour ozone standard, two years ahead of the mandated 2007 attainment date. The area continues to measure attainment of the 1-hour ozone standard.
 9. The DNR is proposing to redesignate the Milwaukee-Racine nonattainment area (Kenosha, Milwaukee, Racine, Ozaukee, Washington and Waukesha Counties) to attainment of the 1-hour ozone standard under state law.

CONCLUSIONS OF LAW

DNR concludes that:

1. DNR has the authority to designate areas of Wisconsin as being in nonattainment or attainment of a NAAQS or to reclassify a nonattainment area as an attainment area under s. 144.371, Wis. Stats., and ch. NR 401, Wis. Adm. Code.
2. The DNR complied with the procedural requirements under s. 144.371, Wis. Stats., and ch. NR 401, Wis. Adm. Code, for redesignating Milwaukee-Racine Severe Nonattainment Area to attainment for the 1-hour ozone NAAQS.

DECISION

DNR hereby redesignates the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha from nonattainment to attainment of the 1-hour ozone NAAQS.

Dated at Madison, Wisconsin _____

STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES

By _____
Matt Frank, Secretary

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that Wisconsin statutes and administrative rules establish time periods within which request to review DNR decisions must be filed.

For judicial review of a decision pursuant to ss. 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by DNR, to file your petition with the appropriate circuit court and serve the petition on DNR. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing pursuant to s. 227.42, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by DNR, to have a petition for hearing on the Secretary of the Department of Natural Resources. The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review.

This notice is provided pursuant to s. 227.48(2), Wis. Stats.