

The following are public comments received on the Department's nonattainment options draft technical support document. The majority of the comments resulted in no change to the document; rather, they quoted statistics from the document or expressed a preference for a particular nonattainment designation. Any changes to the document resulting from a particular comment or response to a comment are noted in red.

Comments were received from the following groups:

1. Door County – Office of Corporation Counsel
2. Manitowoc County – County Executive
3. We Energies
4. Wisconsin Public Service Corporation (WPSC)
5. Wisconsin Power and Light Co. (WPL)
6. Sierra Club
7. Wisconsin Manufacturers and Commerce (WMC)

Commenter: Door County
Office of Corporation Counsel

- Door County remains in nonattainment status. It is understood and accepted that this status will likely persist for the foreseeable future.
- Door County is affected by overwhelming transport from one or more upwind areas.
- Door County's primary goal is to be granted a "rural-transport nonattainment designation." The DNR is asked to support Door County in its endeavor to qualify for and gain the protections of this nonattainment classification.

Rural Transport Classification: Section 182(h) of the Clean Air Act states that in order for an area to receive the "rural-transport nonattainment designation" it must not include any other nonattainment areas (i.e., Option 2 for the Door County area).

- Door County also wishes to stress the importance of the DNR and EPA continuing and strengthening efforts to reduce upwind NOx and VOC emissions. Otherwise down wind areas affected by transport [e.g., Door County] will be hampered in their efforts to meet federally mandated NAAQS and deadlines.

Commenter: Manitowoc County
Office of the County Executive

- Manitowoc County believes that it should not be designated as a nonattainment county for the Door County area for the following reasons:
 - 1) Manitowoc County met the revised ozone standard of 0.075 ppm for the 2006-08 monitoring period.
 - 2) Current performance standards for existing sources have been working. Manitowoc County's ozone design value has shown steady downward progress from 0.092 ppm in 1999-01 to 0.075 ppm in 2006-08.
 - 3) Manitowoc County is only implicated by two of the nine U.S. EPA factors considered for making nonattainment recommendations. Those two factors are air quality in adjacent areas and weather/transport patterns.
 - 4) Regional contributions for attributable ozone from Wisconsin counties, excluding Milwaukee Nonattainment Counties, only account for 5.5% of the total.
- Adding more restrictions on ozone emissions will not have a beneficial effect on business or the well being of the citizens of Manitowoc County.

Regulatory Burden: The Federal Clean Air Act does not provide a nonattainment designation exception based on the resulting designation's potential effect on businesses.

Commenter: We Energies

- Nonattainment designations will impact We Energies' system of electric generation units and our electricity customers in Wisconsin. The proposed 8-hour ozone nonattainment designations will make it more difficult to add new businesses and expand existing businesses in the affected counties.

See the "Regulatory Burden" response above.

- The data in the technical support document (TSD) demonstrate very clearly that the overwhelming contribution to monitored ozone exceedances in Wisconsin comes from regional emissions that are outside the state's boundaries. This conclusion, however, seems somewhat lost by the focus on providing Wisconsin County-specific data to satisfy the letter of the EPA protocol as well as on the nonattainment designation "options" that the Department took out to public information meetings and public hearing. The TSD should be revised to emphasize the supporting data and conclusion that the overwhelming contribution to monitored ozone exceedances in Wisconsin comes from regional emissions that are outside the state's boundaries. We recommend that some additional data and analysis be included in the TSD. Specifically, we request that the TSD include more data that illustrate the regional nature of the ozone problem affecting Wisconsin, and include more analysis and conclusion that Wisconsin point, area, and mobile sources of VOCs and NO_x, contribute insignificantly to the ozone levels monitored in the subject counties.

Regional Transport: The Ozone Source Apportionment (OSAT) results presented in the Department's nonattainment options document already highlight the regional contribution to monitored ozone exceedances in Wisconsin. However, to further illustrate this point, the percentage of NO_x and VOC emissions for non-road, point, area, and on-road emission sectors will be compared from the Illinois Chicago nonattainment counties, the Indiana Chicago nonattainment counties, the Wisconsin nonattainment counties, and the other Wisconsin counties considered for a nonattainment designation in Section 8 of the Department's document.

- U.S. EPA's guidance for presumptive nonattainment boundaries is the county boundary itself, unless that county is part of a Core Based Statistical Area (CBSA) or Combined Statistical Area (CSA). None of these three counties (Door, Kenosha, or Sheboygan) with monitored data above the ozone standard falls within a Wisconsin CBSA or CSA, making the applicable presumptive boundaries the actual county boundaries. Notably, Kenosha County is included in the Chicago-Naperville-Michigan City CSA. The more appropriate use of this monitor is as a compliance monitor for the upwind Chicago-Gary region. In light of the modeling data presented in the Draft TSD showing that nearly all of the monitored ozone levels at the Kenosha monitor are attributable to sources located outside of Wisconsin, this appears to be a critical time to reevaluate this situation. Inappropriate use of the Kenosha County monitor may result in the burden of preparing an unachievable attainment plan.

Presumptive Boundaries: The presumptive boundaries are the county borders; however, based on the nine factors considered in the

Department's document, as recommended by the EPA guidance, additional counties may be designated as nonattainment counties.

Chiwaukee Monitor: Section 107(d)(1)(A)(i) of the Clean Air Act (the Act) states that any area that does not meet the ozone standards, primary or secondary, should be designated as a nonattainment area. Although the monitor is close to the border of Illinois, it is located in Kenosha County.

In a 26 February 2009 call, EPA Region 5 Staff indicated that the Clean Air Act does not provide Kenosha County any relief from a nonattainment designation. The Chiwaukee Prairie monitor is located in Kenosha County and recorded a violation of the ozone standard; therefore, EPA will designate Kenosha County as a nonattainment county.

- If all Wisconsin contributions are eliminated from the OSAT results presented in the TSD and the 18 ppb due to inflow from areas beyond the modeled domain are added back in, the resulting ozone concentration is still above the standard for all three counties (Door 76 ppb, Sheboygan 76 ppb, and Kenosha 84 ppb). This information clearly suggests that option 2 – recommending the minimum number of nonattainment counties, and potential excluding a nonattainment recommendation for Kenosha County, is the option that makes sense for Wisconsin's citizens. This is not only consistent with U.S. EPA's guidance, but it also anticipates the next step in the process, developing a compliant SIP. If the data show that the majority of the ozone problem comes from out-of-state sources, then why would the state want to obligate itself to solving an ozone problem that it is largely not culpable for creating?
- The TSD needs to include data that illustrates the regional nature of the ozone problem affecting Wisconsin. At a minimum, adding emission data and information on traffic and commuting patterns in upwind states would strengthen the TSD (Examples for potential TSD additions provided in the letter).

See the "Regional Transport" response above. The added regional emission comparison includes the on-road sector, which accounts for traffic and commuting patterns.

- It may also be instructive for the Department to ask LADCO to zero-out Wisconsin emissions of NO_x, and VOCs for the 20 Wisconsin counties included in the TSD, then re-run CAMx for an entire ozone season to test the hypothesis suggested by the OSAT data; namely, that Wisconsin point, area, and mobile sources of VOCs and NO_x, contribute insignificantly to the ozone levels monitored in the subject counties.

The suggested zero-out modeling would not provide any additional useful information in selecting ozone nonattainment areas in Wisconsin.

- We oppose Option 1; conditionally support Option 2, conditioned on further evaluation of the appropriate use of the Kenosha County monitor; and question whether Option 3 is consistent with the provisions of the Clean Air Act.

Commenter: Wisconsin Public Service Corporation (WPSC)

- WPSC supports Option 2 for Door and Sheboygan counties and Option 3 for Kenosha County.
- The nonattainment designations of Door, Sheboygan and Kenosha counties have potential to impact not only our own operations, but also the operations of many industries in the State of Wisconsin. The proposed designations could inhibit the siting of new businesses or the expansion of existing businesses in these areas, which is of significant concern during this period of economic uncertainty.

See the "Regulatory Burden" response above.

- U.S. EPA's evaluation criteria for determining nonattainment boundaries do not account for regional transport of ozone. The modeling data shown in the TSD clearly indicate that regional contributions to monitored ozone exceedances are significant, and most of the regional contribution comes from areas beyond the borders of Wisconsin. Unfortunately, the conclusions in the TSD do not discuss any options for dealing with ozone transport from areas outside of Wisconsin. WPSC believes that this issue is of critical importance for determining nonattainment boundaries.

See the "Regional Transport" response above.

- Modeling data in the TSD indicate that even if all sources of ozone in Wisconsin are eliminated, regional ozone transport may still cause monitors in these counties to exceed the 8-hour standard.
- Option 1 is overly conservative because surrounding counties to Door, Sheboygan, and Kenosha met the standard and is contrary to Wis. Stats. 285.01(30) and 285.23(1). None of the three counties are part of a multiple Wisconsin county CSA or CBSA.

Wisconsin Statutes: The referenced State Statutes are as follows:

285.01(30), "Nonattainment area' means an area identified by the department in a document prepared under s. 285.23 (2) where the concentration in the atmosphere of an air contaminant exceeds an ambient air quality standard."

285.23(1), "The department may not identify a county as part of a nonattainment area under the federal clean air act if the concentration of an air contaminant in the atmosphere in that county does not exceed an ambient air quality standard, unless under the federal clean air act the county is required to be designated as part of a nonattainment area."

Option 1 is not contrary to these State Statutes because 285.23(1) states that an area can also be designated as nonattainment under the Federal Clean Air Act (the Act). Section 107(d)(1)(A)(i) of the Act states that any

area that does not meet (or that contributes to ambient air quality in a nearby area that does not meet) the primary or secondary ambient air quality standard for the pollutant should be designated as a nonattainment area. Thus, counties that did not measure an exceedance of the ozone standard can still be designated as nonattainment if they contributed to another county's violation of an ambient air quality standard.

- The monitor located in Kenosha County was located in Chiwaukee, which is very close to the border with Illinois, and was designed to monitor ozone concentrations coming from the Chicago area. The location of this monitor does not allow for the measurement of ozone generated within the State of Wisconsin. Modeling results from the TSD support this assertion.

See the "Chiwaukee Monitor" response above.

- Option 2 closely follows Wis. Stats. 285.01(30) and 285.23(1) in the case of Door and Sheboygan Counties, but may not apply to Kenosha County due to the location of the Chiwaukee monitor.

See the "Wisconsin Statutes" response above.

- There is significant evidence that the main cause of nonattainment in Door, Sheboygan, and Kenosha Counties is the result of regional transport of ozone from areas outside of Wisconsin. However, Option 3 is contrary to Wis. Stats 285.01(30) and 285.23(1) for Door and Sheboygan counties, as the data from monitors in those counties clearly indicate that they are above the 75 ppb limit and modeling data indicate that a significant amount of ozone comes from within Wisconsin. Although the Kenosha County monitor indicates that the ozone concentration is above the limit, the location of the monitor does not capture contributions from Kenosha or any other county in Wisconsin. Since there are no data to support that Kenosha County is nonattainment for ozone, a nonattainment designation should not be made.

See the "Regional Transport" response above.
See the "Chiwaukee Monitor" response above.

Commenter: Wisconsin Power and Light Co. (WPL)

- WPL asks that WDNR better reinforce the significant NOx emissions reductions that have occurred and will continue to occur in Sheboygan County, as a result of voluntary early emission reductions and continued efforts to comply with Wisconsin Administrative Code rule requirements in Chapter 428. This includes recent revisions adding Subchapter IV to NR428, which now requires stringent NOx emissions compliance requirements that are beyond EPA's required levels for Reasonably Available Control Technology (RACT). WPL requests that the WDNR reinforce the significant NOx emissions reductions under Chapter NR428 rule on pages 50 and 62 of the TSD and in the final recommendations provided to the Governor.

Section 11 of the nonattainment options document will be updated to indicate that based on the NR428 RACT rule limitations for the counties of Kenosha, Racine, Milwaukee, Waukesha, Washington, Ozaukee, and Sheboygan the estimated NOx emissions reduction is nearly 15,000 tons/year.

- Statistics and commentary presented on the ongoing and planned measures to reduce NOx at the Sheboygan Falls Energy Facility and Edgewater Generating Station.
- WPL points out that the NR428 Subchapter IV RACT requirements will also reduce NOx in the additional counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington and Waukesha. As presented by the WDNR to the Wisconsin Natural Resources Board when requesting final rule approval, the NR428 RACT rule limitations are estimated to reduce NOx emissions by almost 15,000 tons/year.
- WPL believes that whatever the final outcome of designation status is for Sheboygan County under the revised 8-hour ozone NAAQS, the area is well-positioned to attain the standard as a result of the NR428 rule, Wisconsin RACT rules limiting volatile organic compounds (VOC) emissions, as well as, additional adopted federal rules that will reduce transport of ozone precursor emissions, such as the Clean Air Interstate Rule (CAIR) that has NOx reductions commencing this year.
- Potential issues with maintaining the standard would result if emissions are not controlled from areas outside of Wisconsin. Final recommendations should reinforce the relevance of these out-of-state sources in achieving future compliance.

Commenter: Sierra Club

- The Draft Technical Support Document (TSD) proposes three general options. Only the first option is scientifically and legally defensible and, therefore, we urge the Governor to propose designation of the counties in Option 1.
- Ozone pollution is a significant health threat at levels below the 2008 standard. The Bush Administration's decision to adopt a 0.075 ppm ozone standard conflicted with evidence that a lower standard was necessary to protect public health (statistics and further commentary presented in the letter). It is now well known that the 0.075 ppm standard was the result of improper political influence by the Bush Administration in a process that is supposed to be controlled by science (statistics and further commentary presented in the letter). Because the 0.075 ppm standard is not protective of health and was adopted for political reasons, rather than health reasons, it will be updated. It is almost certain that the U.S. EPA will revise the 2008 standard to no higher than 0.070 ppm and probably as low as 0.060 ppm based on the science we already know. Most or all of the counties in Option 1 will be in violation of these lower values. Also, ozone trends presented in the TSD do not show ozone levels at the 0.060 to 0.070 ppm level for many years (if ever).
- Even if Option 1 were not the only technically and legally defensible option for designating nonattainment areas for the 2008 0.075 standard, the Governor should still propose designation of the counties in Option 1 because it puts Wisconsin on a path to compliance with the coming, lower ozone standard and with ozone levels that impartial scientists tell us is necessary to protect public health. Option 1 is also supported by the total emissions from Wisconsin sources that contribute to ozone formation (statistics from the TSD quoted in the letter).
- We also note that each of the factors to be considered in whether to designate up-wind counties favors including more counties than merely Door, Sheboygan and Kenosha. The point of designating nonattainment areas is to trigger pollution controls to bring down pollution levels. Therefore, because these pollution controls will be most effective if applied to the counties causing the ozone pollution, rather than the counties suffering the pollution, Option 1 is the only option that makes technical and scientific sense.
- Option 3 is not a viable or legally defensible option. It relies on the same flawed legal interpretation that was used to designate nonattainment areas for the 2006 PM_{2.5} standard. In a December 18, 2007 letter, the Governor recommended designations based on projections of 2015 levels. However, in December, 2008, the EPA correctly rejected that proposal and designated counties based on actual monitored pollution levels because that is what the Clean Air Act requires. Wisconsin should avoid making the same mistake here.

Commenter: Wisconsin Manufacturers & Commerce (WMC)

- Nonattainment designations carry with them substantial regulatory and related economic burdens. Given the costly regulatory implications and negative business climate perceptions associated with a nonattainment designation, we urge the Governor to limit his nonattainment designation recommendations to only those counties that are actually violating the standard.

[See the "Regulatory Burden" response above.](#)

- Any evaluation of these nonattainment options must start with the statutory directive (Wis. Stats. 285.23(1)) that nonattainment designations may only be attached to those counties "where the concentration in the atmosphere of an air contaminant exceeds an ambient air quality standard." That is, there must be a "violating monitor." An obvious, but related tenet is the legal and policy imperative that the monitor used to determine compliance in a particular county must be measuring that county's air quality. Based on this litmus test, we oppose Option 1 as it includes numerous counties with no violating monitors. Conversely, we question the validity of Option 3 as it is inconsistent with the Act and an invitation to EPA to make unilateral nonattainment designations not in the best interest of Wisconsin. While we generally support Option 2, we note below the fact Kenosha County does not have a compliance monitor violating the new ozone standard, and should therefore not be designated as nonattainment.

[See the "Wisconsin Statutes" response above.](#)

[See the "Chiwaukee Monitor" response above.](#)

- We strongly oppose the nonattainment designation of any counties that are meeting the standard.
- For Door County, ozone contributions from non-Wisconsin counties amount to over 85 percent for the offending monitor (TSD, pp. 44). Similarly, for Sheboygan County, about 83 percent of the relevant ozone contributions are from out of state (TSD, pp. 45). It is important to note that even the relevancy of these insignificant amounts from Wisconsin is overstated in the TSD. That is, EPA created the CBSA/CSA boundary presumption to address the Act's requirement to include contributing "nearby areas." The presumption can be rebutted if a state identifies other contributing sources in areas that are considered nearby.

[See the "Presumptive Boundaries" response above.](#)

- EPA's nonattainment boundary guidance rests on the presumption that boundaries are defined by Core Based Statistical Area (CBSA) or Combined Statistical Area (CSA). Door County is not part of a CBSA or CSA, thus the presumptive boundary for any ozone nonattainment area is the county boundary (Option 2). Sheboygan County makes up the Sheboygan, WI Core Based Statistical Area (CBSA Code 43100), which includes no other counties. Thus, the presumptive boundary for any ozone nonattainment area is the county boundary (Option 2). Thus, there is a strong presumption, consistent with

Wisconsin law, that only Door and Sheboygan counties be considered nonattainment. To rebut that presumption, upwind counties must have sources that significantly contribute to the violations in those counties. The Department's TSD generally supports the conclusion that emissions from the upwind counties targeted under this option are insignificant.

See the "Presumptive Boundaries" response above

The Department's document does not "generally support the conclusion that emissions from the upwind counties targeted under this option are insignificant." Rather, as summarized in Table 12.1, 12.3, and 12.5 the following upwind counties are considered "substantial source regions" for either NOx and/or VOC: Brown, Milwaukee, Kenosha, Sheboygan, Racine, and Waukesha.

- For example, for Sheboygan County, this option targets Milwaukee, Ozaukee, Washington, Waukesha, Racine, and Kenosha counties for their contribution to the Sheboygan County violation. The Department's TSD analysis merely aggregates all sources in the entire six-county region, and then, only finds a 13.5 percent contribution. There is no attempt to identify specific sources meaningfully affecting the Sheboygan County monitor, or whether such sources are considered "nearby" under the Act. It would difficult, for example, to conclude any given source in any of these counties are making meaningful contribution, and that these emissions are not already controlled.

The OSAT results provided by LADCO were only available on this larger scale. The remaining portions of the document, such as NOx and VOC emissions, population growth, vehicle miles, etc., focus more specifically on the individual counties.

- Finally, we urge the Department to provide additional analysis in the TSD that the Wisconsin counties noted under Option 1, including sources in Door and Sheboygan counties, are insignificant and the violations in Door and Sheboygan counties are driven by regional pollution.

The department followed the guidance provided by the EPA.

See the "Regional Transport" response above

- We urge the Department to evaluate and advocate that Door and Sheboygan obtain regulatory relief under overwhelming or rural transport concepts or other avenues that recognize these counties should not be burdened with additional regulations for pollution not emanating from within their borders. This approach, we believe, is more consistent with the Act and better addresses the violations in those counties than Option 3, which will default to an EPA determination these counties should be considered nonattainment, possibly without any protections otherwise afforded under the Act.

See the "Rural Transport Classification" response above.

Sheboygan County would not be eligible for this classification since it borders the Milwaukee Combined Statistical Area (CSA) and it is also a single county metropolitan area.

- We could support Option 2 except for the fact Kenosha County does not have a compliance monitor violating the new ozone standard. That is, the Chiwaukee monitor in Kenosha County that the Department properly notes exceeds the standard does not measure Wisconsin air quality, nor was it ever intended to be a Wisconsin compliance monitor. The Department's data relating to meteorology/transport patterns and ozone source apportionment provide compelling evidence that the Chiwaukee monitor is not affected by Wisconsin sources. The Chiwaukee monitor is located within the Chiwaukee Prairie Nature Preserve, less than a quarter mile from Lake Michigan, less than a mile north of the Illinois border, and miles south of the city of Kenosha. Based on DNR wind direction data during relevant time periods, zero percent of the pollution affecting the Chiwaukee monitor is coming from the North, the North-Northwest or the Northwest. DNR's ozone source apportionment data shows that at over 94 percent of the contributions to the Chiwaukee monitor during relevant times are from out of state sources. EPA requires a compliance monitor be downwind of population areas. Being upwind of the City of Kenosha or other relevant areas of Kenosha County, the Chiwaukee monitor fails that test. Consistent with these policies, EPA acknowledges, as did the Department in the past, that being downwind of the Chicago-Gary region makes the Chiwaukee monitor the compliance monitor for that region. Thus, treating Chiwaukee monitor as a compliance monitor for any Wisconsin county, including Kenosha, conflicts with the Act and EPA policies and positions, and defies logic. Because Kenosha County does not have a violating monitor, the Governor should recommend an attainment designation.

See the "Chiwaukee Monitor" response above.

- As it stands today, every county in Wisconsin is meeting the current 84 ppb ozone standard. Unfortunately, as with the prior request, the Department is failing to timely submit a redesignation request. One again, we fear these areas are being shortchanged. We urge the Department to submit a redesignation request without delay for all Wisconsin counties now designated nonattainment, including Sheboygan, Manitowoc, Door, Ozone Designation Comments Page 5 Milwaukee, Ozaukee, Washington, Waukesha, Racine, and Kenosha counties. These counties have suffered for too long due to unjustified delays.

The Department is currently working on a redesignation request for all of Wisconsin's nonattainment counties based on 2006 through 2008 ozone data.

- In summary, we respectively request that the Department and the Doyle Administration recommend all Wisconsin counties meeting the new ozone standard, including Kenosha County, be designated attainment and that all Wisconsin counties be swiftly redesignated attainment for the old standard.

- Additional comments provided on DNR's air quality monitoring network proposal, including the following topics:
 - Using the Chiwaukee monitor to determine the compliance status for the downwind Milwaukee-Racine CMSA is inconsistent with the Clean Air Act and EPA policies.
 - DNR and EPA have misconstrued Governor Thompson's and Governor Doyle's requests to EPA for Kenosha County "Ozone Planning" authority.
 - The Chiwaukee monitor is not considered a compliance monitor for any Wisconsin county, even Kenosha.