

APPENDIX TWELVE

WDNR's Response to Public Comments

Comment #	Commenter	Applicable Document	Comment	Response
1	WMC	Redesignation Request Attainment Demonstration	Both documents improperly reference the “Milwaukee-Racine 6-County Nonattainment Area.” The Department must formally recognize the fact that Kenosha County is not in the Milwaukee-Racine CMSA, but rather in the Chicago-Gary-Kenosha CMSA.	The Department agrees that Kenosha County is not part of the Milwaukee-Racine CMSA; however, as part of U.S. EPA’s final nonattainment designations for the 1997 ozone standard ¹ , Kenosha County was grouped with the five counties of the Milwaukee-Racine CMSA. Furthermore, U.S. EPA lists the name of this six county nonattainment area as the “Milwaukee-Racine, WI Nonattainment Area.” Subsequently, no changes will be made to the redesignation request or attainment demonstration.
2	WMC	Redesignation Request	The current list of outstanding applicative requirements listed on page 12 of the redesignation request are not all required by the Clean Air Act (CAA). Only the attainment demonstration and reasonable further progress (RFP) demonstration should be listed.	The Department agrees that the 2008 Control Technology Guidelines (CTGs) should be removed from Section IV. of the redesignation request. Requirement 3 will be revised to read: “A U.S. EPA approved NOx RACT Rule.” Requirement 4 will be revised to read: “All outstanding CTGs, as part of VOC RACT requirements, prior to 2008. All four outstanding requirements will be submitted prior to or concurrently with the redesignation request.
3	WMC	Attainment Demonstration Redesignation Request	The Department needs to clarify those requirements that are considered voluntary. For example, Chapter 5, Section 5.2.5, of the attainment demonstration should be amended to clearly identify those sections that are non-voluntary (5.2.2 and 5.2.3), and those that are voluntary (5.2.4). Other rules are known to have components that exceed CAA requirements, such as the NOx RACT and the mercury rules. To avoid federal enforceability issues such as citizen suits on state-only requirements, it is important that the Department expressly notes all those mandates or other measures listed in these submittals but that are not CAA requirements.	The Department will make the suggested change to both the attainment demonstration and redesignation request to clearly state which measures are voluntary and non-voluntary.

¹ <http://www.epa.gov/ozonedesignations/1997standards/regions/region5desig.htm>

Comment #	Commenter	Applicable Document	Comment	Response
4	WMC	Redesignation Request	The Department's list of "Potential Additional Control Measures" includes certain measures that WMC would object to as the Department lacks statutory authority, for example, mobile source mandates. Developing an anti-idling control program for mobile sources targeting diesel vehicles is inconsistent with the regulatory authority provided in ss. 285.13(4), Wis. Stats.	The list of potential additional control measures is not a commitment by the state to implement any of those listed. However, this issue may be more directly and specifically raised and addressed if and when the Department is required to implement a contingency measure. The Department believes it has the statutory authority to support the current list of additional control measures. Therefore, no changes will be made to the redesignation request.
5	WMC	Redesignation Request	WMC vigorously opposes any effort to impose additional mandates on industry through contingency measures that exceed the requirements of the CAA. For example, any broadening the application of the NOx RACT program into attainment areas, smaller sources, or at higher cost-effectiveness thresholds will disadvantage our industries for little or no benefit. Furthermore, this action would be inconsistent with ss. 285.11(6) and violate the CAA.	The list of potential additional control measures is not a commitment by the state to implement any of those listed. However, this issue may be more directly and specifically raised and addressed if and when the Department is required to implement a contingency measure. The Department believes it has the statutory authority to support the current list of additional control measures. Therefore, no changes will be made to the redesignation request.
6	SEWRPC	Attainment Demonstration	Section 5.2.5 of the attainment demonstration should be amended to clearly identify those sections that are non-voluntary (5.2.2 and 5.2.3), and those that are voluntary (5.2.4).	The Department will make the suggested change to the attainment demonstration to clearly state which measures are voluntary and non-voluntary.
7	SEWRPC	Redesignation Request	It is unclear which of the listed control strategies on pages 21 – 25 of the redesignation request are permanent and enforceable versus those that are voluntary. This section should clearly reference the non-voluntary and voluntary measures and also specifically indicate that the State of Wisconsin does not commit to continue those voluntary programs.	The Department will make the suggested change to the redesignation request to clearly state which measures are voluntary and non-voluntary.
8	SEWRPC	Attainment Demonstration	The redesignation request specifically notes that Wisconsin will be removed from the requirement to implement a NOx SIP. This is not noted in the attainment demonstration document, and it should be.	The Department will make the suggested change to the attainment demonstration.

Comment #	Commenter	Applicable Document	Comment	Response
9	WMC SEWRPC We Energies MMAC S.C.J.	Redesignation Request	The groups listed all provided a public comment in support of the Department's efforts to redesignate the current 1997 ozone standard nonattainment counties to attainment.	N/A

Commenters

WMC – Wisconsin Manufacturers & Commerce
SEWRPC – Southeastern Wisconsin Regional Planning Commission
We Energies – Wisconsin Electric Power Company (i.e., We Energies)
MMAC – Metropolitan Milwaukee Association of Commerce
S.C.J. – S.C. Johnson & Son, Inc.