

and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, and Particulate matter.

Authority: 42 U.S.C. 7401-7671q.

Dated: May 24, 1996.

Jane S. Moore,

Acting Regional Administrator.

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40 CFR Part 52 and 81

[WI70-1-7296; FRL-5510-6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Wisconsin Department of Natural Resources (WDNR) request to redesignate Walworth County to attainment for ozone. In addition, EPA is proposing to approve the associated maintenance plan as a revision to the Wisconsin State Implementation Plan (SIP).

DATES: Comments on this proposed action must be received by July 5, 1996.

ADDRESSES: Written comments should be addressed to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State's submittal and EPA's analysis (Technical Support Document) are available for inspection at the following location: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Randy Robinson at (312) 353-6713 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randy Robinson at (312) 353-6713.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with requirements of the Clean Air Act Amendments of 1990 (ACT), Walworth County was designated as a marginal ozone nonattainment area on November 6, 1991, (56 FR 56850). The nonattainment designation was based on air quality monitored violations of the ozone National Ambient Air Quality Standards (NAAQS).

Recent air quality data shows that Walworth County is not in violation of the ozone NAAQS. Therefore, the area is eligible for redesignation to attainment based on a minimum of 3 years of "clean" air quality data, as required in the Act. On December 15, 1995, the WDNR submitted a request for redesignation to attainment and a maintenance plan for ozone for Walworth County. The remainder of this notice will discuss the regulatory requirements for redesignation to attainment, the details of the Wisconsin submittal, and EPA's rulemaking action.

II. Redesignation Review Criteria

The Act provide the requirements for redesignating a nonattainment area to attainment. Specifically, Section 107(d)(3)(E) provides for redesignation if: (i) The Administrator determines that the area has attained the NAAQS; (ii) The Administrator has fully approved the applicable implementation plan for the area under section 110(k); (iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; (iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of Section 175(A); and (v) The State containing such area has met all requirements applicable to the area under Section 110 and Part D.

The EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (General Preamble), 57 FR 13498 (April 16, 1992), supplemented at 57 FR 18070 (April 28, 1992). Three key memoranda

provide further guidance with respect to Section 107(d)(3)(E) of the Act. The first, dated September 4, 1992, was issued by John Calcagni, Director, Air Quality Management Division, Subject: Procedures for Processing Requests to Redesignate Areas to Attainment (Calcagni Memorandum). The second, dated September 17, 1993, was issued by Michael Shapiro, Acting Assistant Administrator for Air and Radiation, Subject: State Implementation Plan (SIP) Requirements for Area Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) NAAQS on or after November 15, 1992, (Shapiro Memorandum). The third, dated October 14, 1994, was issued by Mary Nichols, Assistant Administrator for Air and Radiation, Subject: Part D New Source Review Requirements for Areas Requesting Redesignation to Attainment (Nichols Memorandum).

Analysis of State Submittal

A. The Area must have attained the Ozone National Ambient Air Quality Standard

For ozone, an area may be considered attaining the NAAQS if there are no violations, as determined in accordance with 40 CFR § 50.9, based on 3 complete, consecutive calendar years of quality assured monitoring data. The data that are used should be the product of ambient monitoring that is representative of the area believed to have the highest concentration. A violation of the NAAQS occurs when the annual average number of expected daily exceedances is equal to or greater than 1 at any site under consideration. A daily exceedance occurs when the maximum hourly ozone concentration during a given day exceeds 0.124 parts per million (ppm). The data should be collected and quality-assured in accordance with 40 CFR Part 58, and recorded in the Aerometric Information Retrieval System (AIRS).

Walworth County contains one ozone monitor, located in Lake Geneva, Wisconsin. To demonstrate monitored attainment with the standard, the WDNR submitted ozone monitoring data for the April 15 through October 15 ozone season for 1992, 1993, and 1994.

MONITORED OZONE CONCENTRATIONS
[Parts per billion]

County	Year	1st High	2nd High	3rd High	4th High
Walworth	1992	120	101	97	96
	1993	107	93	91	89

MONITORED OZONE CONCENTRATIONS—Continued

[Parts per billion]

County	Year	1st High	2nd High	3rd High	4th High
	1994	98	94	91	84

The annual average expected exceedance for this 3-year time period is 0.0. No violations were recorded during this 3-year time period. Additionally, no exceedances were recorded during the 1995 ozone monitoring season. This data has been quality assured and is recorded in AIRS.

B. The Area Must Have a Fully Approved State Implementation Plan (SIP) Under Section 110(k); and the Area Must Have Met All Applicable Requirements Under Section 110 and Part D

In November 1991, Walworth County was designated marginal nonattainment for ozone based on monitored ozone violations occurring in 1988. As a result of this designation, the WDNR was required to submit a revised SIP that meets the requirements of the Act and demonstrates attainment with the ozone standards.

Section 110: General Requirements for Implementation Plans. Section 110(a)(2) of the Act lists the elements to be included in each SIP after adoption by the State and reasonable notice and public hearing. The elements include, but are not limited to, provisions for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor ambient air quality; implementation of a permit program, provisions for Part C Prevention of Significant Deterioration (PSD) and D New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring, and reporting, provisions for modeling, and provisions for public and local agency participation. For purposes of redesignation, the Walworth County SIP was reviewed to ensure that all requirements under the amended Act were satisfied. The EPA has determined that the Walworth County SIP is consistent with the requirements of Section 110 of the Act.

Part D: General Provisions for Nonattainment Areas. Before Walworth County may be redesignated as attainment, it must have fulfilled the applicable requirements of Part D. Under Part D, an area's classification determines the requirements to which it is subject. Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas.

Subpart 2 of Part D establishes additional requirements for ozone nonattainment areas classified under table 1 of Section 181(a). As described in the General Preamble, specific requirements of Subpart 2 may override Subpart 1's general provisions (57 FR 13501 (April 16, 1992)). Walworth County was classified as a marginal nonattainment area. Therefore, in order to be redesignated, the State must meet the applicable requirements of Subpart 1 of Part D—specifically Sections 172 and 176, as well as the applicable requirements of Subpart 2 of Part D.

Section 172 Requirements. The State redesignation request for Walworth County has satisfied all of the relevant submittal requirements under Section 172 necessary for the area to be redesignated to attainment.

The reasonable further progress (RFP) requirement under Section 172(c)(2) is defined as progress that must be made toward attainment. This requirement is not relevant because Walworth County has already demonstrated monitored attainment of the ozone NAAQS (General Preamble, 57 FR 13564).

Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The requirement was superseded by the inventory requirement in Section 182(a)(1). The WDNR submitted such an inventory on November 15, 1992. It was approved on June 15, 1994 (59 FR 30702).

Section 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. The WDNR submitted information on nonattainment area new source review rules on November 15, 1992. The rules were approved by EPA on January 18, 1995 (60 FR 3538). The State's Prevention of Significant Deterioration (PSD) program will become effective in Walworth County upon redesignation to attainment. The State was delegated the PSD program on November 4, 1987.

Section 176 Conformity Requirements. Section 176 of the Clean Air Act requires States to revise their SIPs to establish criteria and procedures to ensure that, before they are taken, Federal actions conform to the air quality planning goals in the applicable State SIP. The requirement to determine

conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revision to be submitted by the States must be consistent with Federal conformity regulations that the Act required the EPA to promulgate. Congress provided for the State revisions to be submitted 1 year after the date of promulgation of final EPA conformity regulations.

The EPA promulgated final transportation conformity regulations on November 24, 1993, (58 FR 62188) and general conformity regulations on November 30, 1993, (58 FR 63214). Pursuant to Section 51.396 of the transportation conformity rule and Section 51.851 of the general conformity rule, the State of Wisconsin submitted a SIP revision containing transportation and general conformity criteria and procedures on November 23, 1994, and November 30, 1994, respectively. The EPA has not yet approved these rules as part of the SIP.

The EPA believes it is reasonable to interpret the conformity requirements as not being applicable requirements for purposes of evaluating the redesignation request under Section 107(d). The rationale for this is based on a combination of two factors. First, the requirement to submit SIP revisions to comply with the conformity provisions of the Act continues to apply to areas after redesignation to attainment, since such areas would be subject to a Section 175A maintenance plan. Second, EPA's Federal conformity rules require the performance of conformity analyses in the absence of federally approved State rules. Therefore, because areas are subject to the conformity requirements regardless of whether they are redesignated to attainment and must implement conformity under Federal rules if State rules are not yet approved, the EPA believes it is reasonable to view these requirements as not being applicable requirements for purposes of evaluation of a redesignation request. Consequently, the ozone redesignation request for the Walworth County area may be approved notwithstanding the lack of fully approved State

transportation and general conformity rules. This policy was also exercised in the Tampa, Florida ozone redesignation finalized on December 7, 1995 (60 FR 62748).

Subpart 2 Section 182 Requirements. Walworth County is classified marginal nonattainment; therefore, Part D, Subpart 2, Section 182(a) requirements apply. In accordance with guidance presented in the Shapiro memorandum, the requirements which came due prior to the submission of the request to redesignate the Walworth County area must be fully approved into the SIP before the request to redesignate the area to attainment can be approved. Those requirements are discussed below:

Section 182(a)(1) 1990 Base Year Inventory. The 1990 base year emission inventory was due on November 15, 1992. It was submitted to EPA on November 15, 1992, and approved by EPA on June 15, 1994, (59 FR 30702).

Section 182(a)(3)(B) Emission Statements. The emission statements SIP was due on November 15, 1992. It was submitted to the EPA on November 15, 1992, and approved by EPA on December 6, 1993 (58 FR 64155).

Section 182(a)(2)(A) RACT Corrections. The WDNR submitted information regarding RACT corrections on November 15, 1992. The EPA approved the RACT corrections on August 15, 1994 (59 FR 41709).

Section 182(a)(4) 1.1 to 1.0 Offset. Section 182(a)(4) requires all major new sources or modifications in a marginal nonattainment area to achieve offsetting reductions of VOCs at a ratio of at least 1.1 to 1.0 as part of New Source Review (NSR). The Mary Nichols memorandum states that areas being redesignated need not comply with the requirement that an NSR program be approved prior to redesignation if the State can demonstrate maintenance of the standard without the NSR restrictions. The State has demonstrated that maintenance can be maintained without NSR offsets in effect. Therefore, this requirement is not applicable. Upon redesignation to attainment, the sources will become subject to PSD requirements and offsets will no longer apply. Emissions will continue to be tracked every 3 years.

Section 182(f) NO_x Requirement. Section 182(f) establishes NO_x requirements for ozone nonattainment areas. However, it provides that these requirements do not apply to an area if the Administrator determines that NO_x reductions would not contribute to attainment. On July 13, 1994, WDNR submitted, along with the other Lake Michigan area states (i.e., Illinois, Indiana, and Michigan), a Section 182(f) NO_x petition to be relieved of the Section 182(f) NO_x requirements based on urban airshed modeling. The modeling demonstrated that NO_x reductions would not contribute to

attainment of the NAAQS for ozone in the modeled area, which includes Walworth County. The EPA approved the petition on January 26, 1996 (61 FR 2428).

C. The Improvement in Air Quality Must Be Due to Permanent and Enforceable Reductions in Emissions Resulting From the SIP, Federal Measures and Other Permanent and Enforceable Reductions

The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. To satisfy this requirement, the State should estimate the percent reduction from the year that it used to determine the design value for designation and classification, to the attainment year (Calcagni Memorandum). These reductions may be achieved from Federal measures and control measures that have been adopted and implemented by the State. Emission rates, production capacities and other information should be used in the estimation. Sources should be assumed to operate at permitted or historic peak levels unless evidence is presented that such an assumption is unrealistic.

The WDNR submittal documents reductions in VOC and NO_x emissions from 1988 (the design year) to 1993 (the attainment year). Those reductions are shown in the tables below.

Sector	1988	1990	1993
VOC Emissions (Tons per day):			
Point	1.48	1.51	1.55
Area	7.53	7.58	7.63
Mobile	13.87	12.14	9.59
Totals	22.88	21.23	18.77
% Change from 1988 (design year)		-7.17	-17.9

Sector	1988	1990	1993
NO_x Emissions (Tons per day):			
Point	0.53	0.54	0.55
Area	0.77	0.79	0.73
Mobile	12.07	11.89	11.60
Totals	13.37	13.22	12.88
% Change from 1988 (design year)		-1.1	-3.7

The tables show that VOC and NO_x emissions decreased 4.1 and 0.49 tons per day, respectively from 1988 to 1993. The 1988 emissions in the above Tables were back casted from 1990 base year emissions, according to variables such as population growth, economic growth, and vehicle miles traveled. Although

Walworth County experienced economic and population growth during the years 1988 to 1993, county-wide VOC and NO_x decreased during that time period. The majority of the reductions are due to lower highway motor vehicle emissions. These reductions are directly attributable to

the implementation of the Federal Motor Vehicle Control Program (FMVCP).

D. The Area Must Have a Fully Approved Maintenance Plan Meeting the Requirements of Section 175A

Section 175A of the CAA defines requirements for maintenance plans. The maintenance plan is a SIP revision which provides for maintenance of the relevant NAAQS in the area for at least 10 years after redesignation. There are five core provisions which the maintenance plan should address: the attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan. The attainment inventory should identify the level of emissions in the area which is sufficient to attain the ozone NAAQS and should include the emissions during the time

period associated with the monitoring data showing attainment. Maintenance is demonstrated by showing that future emissions will not exceed the level of the attainment inventory. The maintenance plan must also provide for continued operation of an appropriate air quality monitoring network to verify attainment status of the area. The plan must indicate how the State will track the progress of the maintenance plan. Finally, the maintenance plan must include contingency measures which would promptly correct any violation of the ozone NAAQS that occurs after redesignation of the area to attainment.

Attainment Inventory. The Walworth County submittal contained inventories of 1990 actual VOC and NO_x emissions from stationary, area, and mobile

sources. This is the most accurate, comprehensive emission inventory available for the area. The 1990 emission inventory was projected to 1993 to provide an emissions inventory representative of attainment conditions based upon the lack of a monitored ozone violation for the years 1992–1994.

Maintenance Demonstration. The Walworth County submittal shows projected VOC and NO_x emissions from the 1993 attainment inventory to 2007. The projections show that the level of emissions established for the attainment year inventory will not be exceeded over the 10-year maintenance period. The following tables list the VOC, and NO_x emissions for the base year, interim year and the final year.

Sector	1993 attain	1996 proj.	2007 proj.
Summary of VOC Emissions (tons/day):			
Area	7.62	7.37	7.37
Point	1.55	1.60	1.79
Mobile	9.59	9.39	8.00
Totals	18.77	18.36	17.16
% Change from 1993	- 2.18	- 8.58
Summary of NO_x Emissions (tons/day):			
Area	0.73	0.73	0.66
Point	0.55	0.57	0.64
Mobile	11.60	11.39	10.19
Totals	12.88	12.68	11.48
% Change from 1993	- 1.60	- 10.87

Emission Projections. All emission projections were made from emissions calculated for WDNR's 1990 base year inventory. The 1990 base year inventory reflects tons per typical summer day emissions as well as an 80 percent rule effectiveness assumption. Projections were generally based on the following equation: Proj. Emissions = 1990 Emissions*Proj. Factor*(1-(Cont. Efficiency)*(RE)*(RP)) where RE = rule effectiveness (default = 80 percent) and RP = rule penetration.

Projections of stationary source emissions through the year 2007 were developed based primarily on economic growth projection factors. The annual growth factors were derived from this data and those growth factors were used to determine future year inventories. The area source emissions were projected using a variety of growth factors such as population growth, gasoline market, vehicle miles traveled, farmland, etc. To project future year mobile VOC emissions, a VMT growth rate of 2.7 percent was used for the period between 1988 and 1999. The VMT growth rate for 2000 to 2007 drops

to 2.2 percent. These estimates were provided by the Southeastern Wisconsin Regional Planning Commission. The MOBILE5a model was run to produce emission factors for the years 1988, 1990, 1993, 1996, and 2007.

Monitoring Network. There is currently one monitor measuring ozone in Walworth County. The WDNR has committed to continue operating and maintaining it—s ozone monitor in Walworth County for the 10 year maintenance period to verify the attainment status of the area.

Contingency Plan. The contingency plan for Walworth County contains three major components: attainment tracking, contingency measures, and a mechanism that triggers the implementation of the contingency measures. In a SIP revision submittal dated April 12, 1996, the State revised the section of the redesignation request pertaining to the triggering and implementation of the contingency plan. As discussed below, the revisions incorporate EPA review and approval, and public review and comment

procedures into the contingency plan methodology.

The WDNR will track the progress of the maintenance plan for Walworth County by generating VOC and NO_x emissions inventories for point, area, and mobile sources for the years 1996, 1999, 2002, 2005, and 2007.

The contingency measures to be considered for implementation are Stage II vapor recovery and non-CTG RACT measures. Selection of the contingency measures will take place in the event the ozone NAAQS is violated and if an EPA approved analysis shows that emission sources within Walworth County caused the violation. This analysis is being conducted because the State has maintained that the level of ozone in Walworth County is due to ozone and ozone precursors being transported from upwind urbanized areas such as the greater Chicago area. Both the study protocol and the completed analysis will be submitted to EPA for approval. The completed analysis will be subject to public comment. If the analysis shows the violation not to be attributable to

transport from other areas, contingency measures will be implemented according to the following schedule:

Activity	Completion time
Violation of the ozone NAAQS:	
Verify violation and submit plan to analyze violation to EPA for approval	60 days after violation measurement.
Submit completed analysis, public notice and comment material to EPA for approval.	14 months after violation measurement.
Implement Stage II vapor recovery	24 months after violation.
Non-CTG RACT measures	24 months after violation.

The Walworth County submittal adequately addresses the five basic components which comprise a maintenance plan (attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and a contingency plan) and, therefore, satisfies the maintenance plan requirement in Section 107(d)(3)(E)(iv).

E. The Area Must Have Met All Applicable Requirements Under Section 110 and Part D

Section 110 and Part D requirements were discussed under section II B, above.

III. Proposed Action

The EPA is proposing to approve WDNR's December 15, 1995, request for redesignation to attainment for ozone and Section 175A maintenance plan for Walworth County.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Ozone SIPs are designed to satisfy the requirements of Part D of the Act and to provide for attainment and maintenance of the ozone NAAQS. This proposed redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the VOC or NO_x emission limitations and restrictions contained in the approved ozone SIP. Changes to ozone SIP VOC regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding on nonimplementation [Section 173(b) of the Clean Air Act] and in a SIP deficiency call made pursuant to Section 110(a)(2)(H) of the Clean Air Act.

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989, (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), 2 U.S.C. 1532, requires that the EPA prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year. Section 203, 2 U.S.C. 1533, requires the EPA to establish a plan for obtaining input from and informing, educating, and advising any small governments that may be significantly or uniquely affected by the rule.

Under Section 205 of the Unfunded Mandates Act, 2 U.S.C. 1535, the EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. The EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this proposed rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than \$100 million in any 1 year, the EPA has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the EPA is not required to develop a plan with regard to small governments.

SIP approvals under Section 110 and Subchapter I, Part D, of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. EPA*, 427 U.S. 246, 256-66 (1976).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Motor vehicle pollution, Nitrogen oxides, Ozone, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401-7671q.

Dated: May 13, 1996.

Valdas V. Adamkus,

Regional Administrator.

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