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December 30, 2022

Debra Shore
Regional Administrator
U.S. Environmental Protection Agency - Region 5
77 W. Jackson Blvd
Chicago, IL 60604

Subject: Attainment Planning for the 2015 Ozone National Ambient Air Quality Standard

Dear Regional Administrator Shore:

Following the successful redesignation of the Manitowoc and Revised Door County areas to attainment in 2021, Wisconsin has three remaining nonattainment areas under the 2015 ozone National Ambient Air Quality Standard (NAAQS): the partial Sheboygan County area, the Milwaukee area, and the partial Kenosha County area. The Kenosha County area is part of the greater Chicago 2015 ozone NAAQS nonattainment area, which also includes all or parts of counties in Illinois and Indiana. To comply with the Clean Air Act (CAA), these areas were reclassified by EPA to “moderate” nonattainment on October 7, 2022, effective November 7, 2022.¹ Attainment plans for these nonattainment areas are due January 1, 2023.²

Attainment planning is a cornerstone process under the CAA. Attainment plans provide assurances that nonattainment areas will attain the health-based NAAQS on time, ensure the implementation of required emissions control programs, and facilitate responsible economic development that is protective of air quality. As co-regulators under the CAA, states and EPA have both an interest and obligation to ensure attainment plans are developed and approved in a timely manner so that the NAAQS can be attained without undue delay.

Wisconsin has a history of actively addressing its lakeshore ozone challenges and, as such, already implements most of the programs required by the CAA to reduce ozone-causing emissions. For example, the state already operates a vehicle emissions testing program, has a federally approved NO_x Reasonably Achievable Control Technology (RACT) program, implements a fully-approved nonattainment new source review permitting program, and can demonstrate the required emissions reductions through emissions inventories.

Recognizing that additional elements need to be satisfied to fully meet moderate area requirements for the 2015 ozone NAAQS, Wisconsin has been working with the Lake Michigan Air Directors Consortium (LADCO) since 2021 to develop technical and policy products which could be used to develop ozone attainment plans. A variety of challenges make it impossible to develop and implement the additional control strategies necessary to demonstrate attainment in advance of the 2023 ozone season. Wisconsin is therefore

¹ 87 FR 60897 (Oct. 7, 2022).

² Ibid.

currently engaging with Illinois and Indiana on a robust attainment planning process that focuses on developing an emissions control scenario to achieve attainment in the Chicago and Sheboygan nonattainment areas by the 2026 ozone season. This effort, undertaken with the support of LADCO, draws upon several technical analyses that Wisconsin and LADCO completed over the past year, including an updated, comprehensive assessment of control programs that could be implemented throughout the region. This also includes developing an understanding of how non-regulatory opportunities, like programs funded by the Inflation Reduction Act (IRA), can be leveraged in attainment planning.

Despite this progress, several challenges have been identified that pose barriers to the development of fully approvable attainment plans for Wisconsin's nonattainment areas. These issues are beyond Wisconsin's control and require timely EPA intervention to resolve. These are detailed below.

1. Attainment will require significant emissions reductions outside the state's control.

To support state attainment demonstrations, LADCO completed updated emissions inventories and regional photochemical modeling for the 2023 moderate-area attainment year. This modeling indicates that Milwaukee may attain the NAAQS by 2023, but Kenosha and Sheboygan will not. While these results open a path for Milwaukee towards an approvable attainment plan, Kenosha and Sheboygan will need additional reductions before they can model attainment. The modeling result for Kenosha obligates the entire tristate Chicago nonattainment area to determine how emissions can be reduced so that the area can show attainment.

When considering additional emissions reductions, a critical factor is that both the Kenosha and Sheboygan areas are heavily impacted by out-of-state emissions. LADCO's apportionment modeling indicates that Wisconsin is only responsible for 2% of the ozone at Kenosha and 5% in Sheboygan (see table).³

Nonattainment Area	Percent Contribution to Ozone ⁴		
	Wisconsin	Illinois	Indiana
Kenosha (Chicago)	2%	37%	8%
Sheboygan	5%	27%	12%

It is technically infeasible for Wisconsin to model attainment for those areas based only on additional in-state emissions reductions. Any attainment planning scenario for those areas must mathematically include emissions reductions in upwind contributing states, especially Illinois and Indiana, in amounts commensurate with their contributions to these areas. While the aforementioned three-state attainment planning discussions are intended to address this issue in part, the lack of a final EPA transport rule fully addressing upwind emissions impacts on the Kenosha and Sheboygan areas remains a significant barrier, especially given EPA's multiyear delay in finalizing this rule.

A further complication to achieving the necessary emissions reductions is that a significant portion of emissions are attributed to federally controlled sources, especially mobile sources. On-road vehicles alone account for about 38% of the NO_x inventory in Wisconsin and the LADCO modeling described above

³ These results are broadly consistent with EPA's modeling for the proposed Good Neighbor Plan for the 2015 Ozone NAAQS, as well as historical state contribution trends.

⁴ LADCO modeling. Contributions are for the Kenosha Chiwaukee Prairie and Sheboygan Kohler-Andrae monitors (controlling monitors in each nonattainment area).

concludes that mobile sources are responsible for 39 to 44% of the ozone in Wisconsin's nonattainment areas. Achieving attainment will necessitate significantly reducing emissions in the mobile source sector, over which states have very little control. While EPA's long-delayed heavy-duty NOx rule, released just this month, makes progress towards reducing emissions in this sector, it is insufficient to resolve the impacts of this sector on Wisconsin's ozone levels. No emissions reductions will be realized from this rule until after the serious area attainment date for the 2015 ozone NAAQS.

2. Insufficient time to implement the emissions control programs needed for attainment

The moderate area attainment date of August 3, 2024 requires areas to attain the standard in 2023. In practice, given the time needed to develop and implement new regulatory control programs, there is nothing states can do to make additional emissions reductions before the 2023 ozone season. For example, in Wisconsin it takes at least 30 months to complete any new rulemaking. Given these procedural constraints, it is not possible for an attainment plan submitted by January 1, 2023 to include any new control measures, whether needed for attainment or not.

A further challenge is the scale of emissions reductions needed to demonstrate attainment. LADCO modeling indicates that tens of thousands of tons of annual, statewide emissions reductions are required in Illinois, Indiana and Wisconsin, beyond the 2023 on-the-books controls, for Kenosha and Sheboygan to attain (see table).

Nonattainment Area	Additional reductions needed to attain in 2023 ⁵	
	NOx (tons/year)	VOC (tons/year)
Kenosha (Chicago)	68,000	28,000
Sheboygan	200,000	70,000

For context, the NOx reductions required for Sheboygan to attain in 2023 *exceed Wisconsin's total statewide 2017 NOx inventory*.⁶ Even considering what the three states might accomplish cumulatively, achieving this level of reduction by 2023 is simply unattainable, particularly when a large portion of this inventory is from federal emissions sources beyond state control.

In recognition of this situation, Wisconsin is currently working on attainment scenarios with Illinois and Indiana for the Kenosha and Sheboygan areas to reach attainment by 2026. This provides the necessary time for new programs to be identified, modeled, submitted in SIP revisions, and implemented through the required state regulatory processes. It also allows states the time to address the scale of reductions needed for attainment.

This timeline also reflects that EPA repeatedly delayed acting on CAA transport requirements for the 2015 ozone NAAQS. EPA missed its mandated deadlines to act on most state transport SIPs, and currently plans to finalize its proposed Good Neighbor Plan in March 2023 – nearly four-and-a-half years past the October 1, 2018 CAA deadline for state ozone transport obligations to be satisfied. Further delays are likely, since EPA recently requested (and received) court approval to postpone its final action on state transport SIPs from December 15, 2022 to January 31, 2023. This may in turn lead to further delays in the final transport rule as well.

⁵ Reductions needed in Illinois, Indiana and Wisconsin beyond on-the-books control programs.

⁶ 2017 NEI.

In light of these delays, EPA now acknowledges in the proposed Good Neighbor Plan that 2026 is the appropriate date to fully implement emissions reductions needed for the 2015 ozone NAAQS because of the time required to fully implement the associated emissions control programs.⁷ Given the large influence of transported ozone precursor pollutants on these nonattainment areas, and the potential overlap with stationary source emissions control programs that states might otherwise consider in their attainment plans, aligning the 2015 ozone NAAQS attainment date with the proposed Good Neighbor Plan dates is logical from an air quality planning perspective.

3. Potential for delayed implementation of required emissions control programs

It is critical that states move quickly to implement any statutorily required programs to facilitate timely attainment. For these moderate nonattainment areas, that includes VOC and NO_x RACT programs. Wisconsin has been implementing an approved NO_x RACT program in its nonattainment areas for over a decade, recently updated the state's VOC rules, recently completed a VOC RACT analysis for Kenosha and Sheboygan for the 2008 ozone NAAQS and has been actively working with Region 5 to conduct source-specific VOC evaluations in the Milwaukee area. However, not all upwind states that contribute to Wisconsin's nonattainment monitors have similarly implemented these required programs, including for previous ozone NAAQS. Given this history, there is the potential for these programs to continue to not be implemented, despite being required by the CAA.

4. Lack of clear and approvable pathways to fulfill attainment plan contingency measures requirements

Finally, EPA must issue updated guidance on how states should address attainment plan contingency measures. Given recent court decisions, EPA has told states that the traditional approach of relying on measures such as federal mobile source rules is no longer approvable. However, it remains unclear how a state can otherwise achieve the required reductions in the timeframe required, especially given the procedural time needed to develop and implement new state rules.

EPA is currently developing updated contingency measure guidance. However, EPA only recently began to engage its state co-regulators on this complex topic and announced that states should not expect a draft until early 2023, with a final document perhaps later that year. This schedule fails to recognize that Wisconsin needed this guidance well before the January 1, 2023 attainment planning deadline. This is not acceptable, especially since this issue was identified by EPA well over a year ago.

Implications

EPA must approve all requirements, not just a modeled attainment demonstration, for Wisconsin to have a fully approved attainment plan. Each of the issues identified above form a major barrier to the development of approvable moderate area attainment plans for Wisconsin's nonattainment areas.

Attainment plans are not a paperwork exercise to check the box on a CAA requirement; they are required so that nonattainment areas achieve the NAAQS in a timely manner. The lack of approved attainment plans for Wisconsin has critical, real-world implications. These include:

⁷ See 87 FR 20036 (April 6, 2022), for example: "EPA proposes to find the 2026 ozone season is as expeditious as practicable to implement substantial emissions reductions from potential new post-combustion control installations at EGUs as well as from installation of new pollution controls at non-EGUs." (p. 20039).

- Air quality and public health impacts. Approximately 33% of Wisconsin's population (1.9 million people) reside in areas that remain in nonattainment of the 2015 ozone NAAQS. This includes the state's largest urban area. The persistence of ozone levels exceeding federal standards will continue to negatively impact the health of Wisconsin citizens along the Lake Michigan shoreline until attainment is achieved.
- Impacts on facilities seeking to open or expand in Wisconsin's nonattainment areas. Wisconsin has emissions reduction credits (ERCs) that are potentially available for use as nonattainment new source review (NNSR) offsets in its nonattainment areas. However, under EPA's current interpretation, these ERCs cannot be used in these moderate areas until these areas have fully approved attainment plans. This barrier stifles economic development in these areas, contrary to the intention of the CAA.
- Potential ramifications under the CAA. The lack of a clear, technical path forward on approvable attainment plans places both Wisconsin and EPA in a situation where the state may be faced with unacceptable consequences under the CAA, including federal implementation plans and sanctions that include the potential loss of federal highway funds.

Role of EPA

Wisconsin is committed to meeting its obligations and deadlines under the CAA for implementing required attainment plan elements in nonattainment areas. For example, the state already implements an enhanced vehicle inspection and maintenance program, has a federally approved NO_x RACT program, is actively working with EPA on an approvable VOC RACT analysis, and can demonstrate Reasonable Further Progress (RFP) with emissions inventories. Wisconsin takes its CAA obligations seriously and has a demonstrated history of implementing emissions control programs necessary to achieve attainment.

These efforts, while important, have been demonstrated to be insufficient on their own to satisfy all the requirements needed to demonstrate and achieve attainment. Addressing the barriers described above requires EPA to take additional action, either directly or by providing additional assistance and direction to the state. Specifically, for Wisconsin to attain, it is necessary for EPA to:

- Finalize a Good Neighbor Plan that fully resolves the transport obligation of upwind states to all of Wisconsin's nonattainment monitors, a requirement EPA's March 2022 proposal did not meet. EPA's role in ensuring states address their interstate transport contributions for the 2015 ozone NAAQS in timelines consistent with attainment dates is clearly defined in the CAA and is critical for Wisconsin to attain the NAAQS. This rule must be finalized without further delay.
- Develop technically sound flexibilities that would allow Wisconsin (and other states) to meet near-term CAA attainment requirements while recognizing that a significant portion of ozone-causing emissions are from federally controlled sources. While EPA's updated engine and vehicle standards will result in needed mobile source emissions reductions, these reductions will not be realized for decades and will not help states meet upcoming attainment deadlines. To accelerate emissions reductions from federally controlled mobile sources, EPA should also work with Wisconsin to determine how IRA funding can be used to support qualifying projects in Wisconsin's nonattainment areas.

- Finalize guidance for developing contingency measures that recognizes the current temporal and technical challenges to meeting this requirement and that outlines a clear path to EPA approvability. The lack of final EPA guidance on this topic makes it impossible for Wisconsin to develop approvable measures in an attainment plan by the January 1, 2023 deadline.
- Ensure that required RACT programs in states that are part of, or upwind of, Wisconsin's nonattainment areas are fully implemented without delay. If necessary, EPA must exercise its nondiscretionary CAA obligation to make timely "findings of failure to submit" once the due date to submit these RACT programs has passed and move quickly to act on those SIP revisions, if and when submitted.
- Clarify that Wisconsin is allowed to use ERCs in its nonattainment areas even if they lack fully approved attainment plans. Responsible economic development must be allowed to continue in these areas, especially if the issues preventing the approvability of attainment plans are beyond the state's control.

It is critical for EPA to take timely action to address these issues. Delays in resolving nonattainment will mean Wisconsin citizens will continue to be exposed to unhealthy air pollution, Wisconsin businesses will continue to face challenges relocating and expanding, and the state will continue to struggle to meet its attainment planning obligations under the CAA. I look forward to additional collaboration between our agencies as we pursue our joint goal of timely ozone attainment in Wisconsin.

Sincerely,

DocuSigned by:
Gail Good
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12/30/2022 | 9:03 AM CST

Gail E. Good
Director, Air Management
Wisconsin Department of Natural Resources

cc: John Mooney, EPA Region 5
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