



**CLEAN WISCONSIN'S COMMENTS OPPOSING
US EPA'S PROPOSAL TO GRANT A 1-YEAR EXTENSION FOR SHEBOYGAN COUNTY
TO COMPLY WITH THE 2008 OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS**

EPA-HQ-OAR-2018-0226 / 83 Fed. Reg. 53781 (November 15, 2018)

Submitted via www.regulations.gov (December 14, 2018)

Clean Wisconsin files these comments¹ opposing the U.S. Environmental Protection Agency's (EPA) proposal to grant a Wisconsin Department of Natural Resources (WDNR) request to allow Sheboygan County, Wisconsin a 1-year extension to comply with the 2008 Ozone National Ambient Air Quality Standards (NAAQS). 83 Fed. Reg. 53781 (November 15, 2018). The proposed extension would not only delay the deadline for compliance with the 2008 ozone standard, it would also allow Sheboygan County to avoid automatic redesignation from "moderate" to "serious" nonattainment with the standard. 42 U.S.C. § 9511(b)(2); *see also*, 83 Fed. Reg. at 56785/ 2-3 (describing applicability to Sheboygan and citing 81 Fed. Reg. 91841 (Dec. 19, 2016), 81 Fed. Reg. 26697 (May 4, 2016)). EPA's proposed approval of WDNR's request violates the Clean Air Act and implementation rules governing such extensions.

Clean Wisconsin is a not-for-profit membership organization dedicated to environmental education, advocacy and legal action to protect air quality, water quality and natural resources in the State of Wisconsin. Clean Wisconsin members live, work and recreate in Sheboygan County and downwind of this ozone nonattainment area. Clean Wisconsin members would be adversely affected if EPA were to postpone the deadline for Sheboygan County to comply with the 2008 ozone NAAQS, because the proposed 1-year extension would allow WDNR to delay taking necessary steps to clean up dirty air in Sheboygan County and would expose Clean Wisconsin members to yet another year of unhealthy levels of ozone smog pollution.

Background

Sheboygan County was originally designated as a marginal nonattainment area for the 2008 ozone NAAQS in 2012. 77 Fed. Reg. 30160 (May 21, 2012) (effective date: July 20, 2012). As a result of this nonattainment designation, Sheboygan County was required by the Clean Air Act to meet the 2008 ozone NAAQS within three years -- by July 20, 2015. See 42 U.S.C. § 7511(a)(1) (Table 1). When Sheboygan County failed to attain the standard by the deadline, WDNR requested a one-year extension, to July 20, 2016. Sheboygan County was subsequently reclassified, by operation of law, to "moderate" nonattainment status and EPA required WDNR to take additional steps to achieve

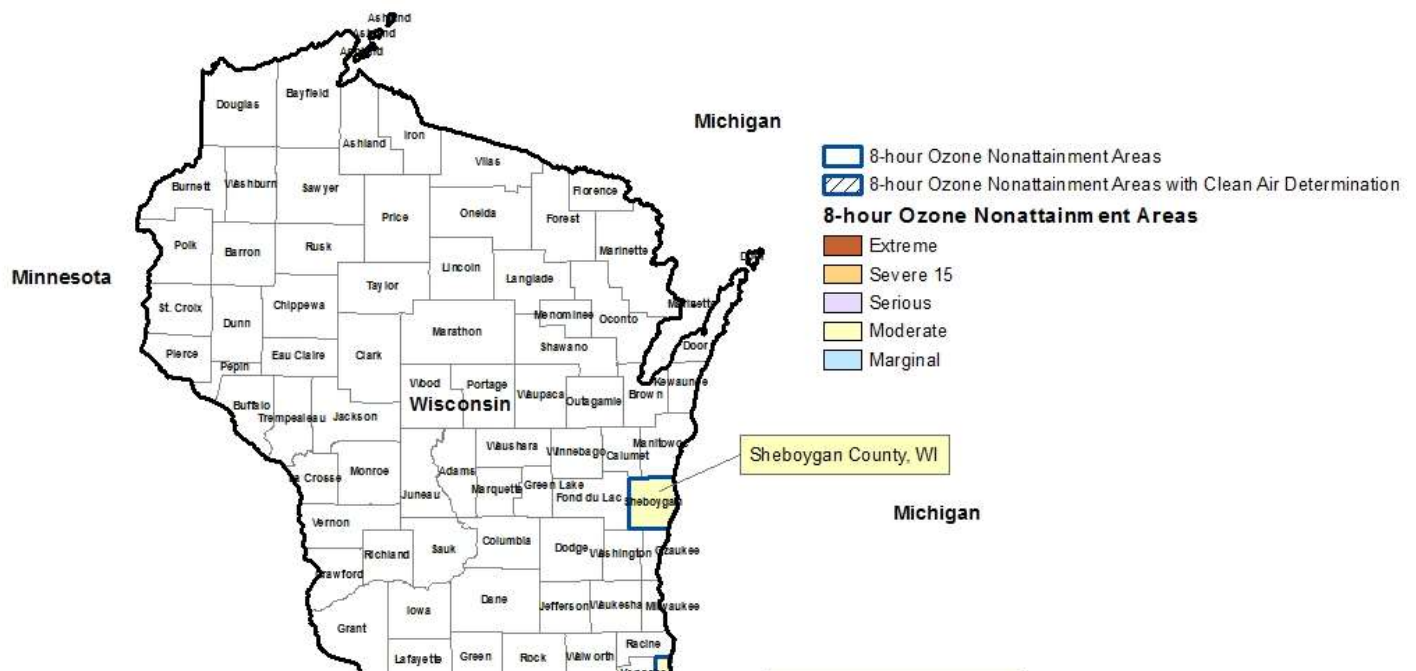
¹ Clean Wisconsin's comments are filed in accordance with US EPA's direction to submit comments on this matter in Docket No. EPA-HQ-OAR-2018-0226 through www.regulations.gov on or before December 14, 2018.

attainment by July 20, 2018. 83 Fed. Reg. at 56785/ 2-3 (citing 81 Fed. Reg 91841 (Dec. 19, 2016), 81 Fed Reg 26697 (May 4, 2016)).

Now -- a full decade after the 2008 ozone NAAQS was established -- Sheboygan County has failed again to meet the deadline to attain the 2008 ozone NAAQS, and again WDNR requests an extension and seeks to avoid automatic reclassification of Sheboygan County to “severe” nonattainment by operation of law. EPA proposes to grant WDNR’s requests. 83 Fed. Reg. 53787.

Wisconsin 8-hour Ozone Nonattainment Areas (2008 Standard)

11/30/2018



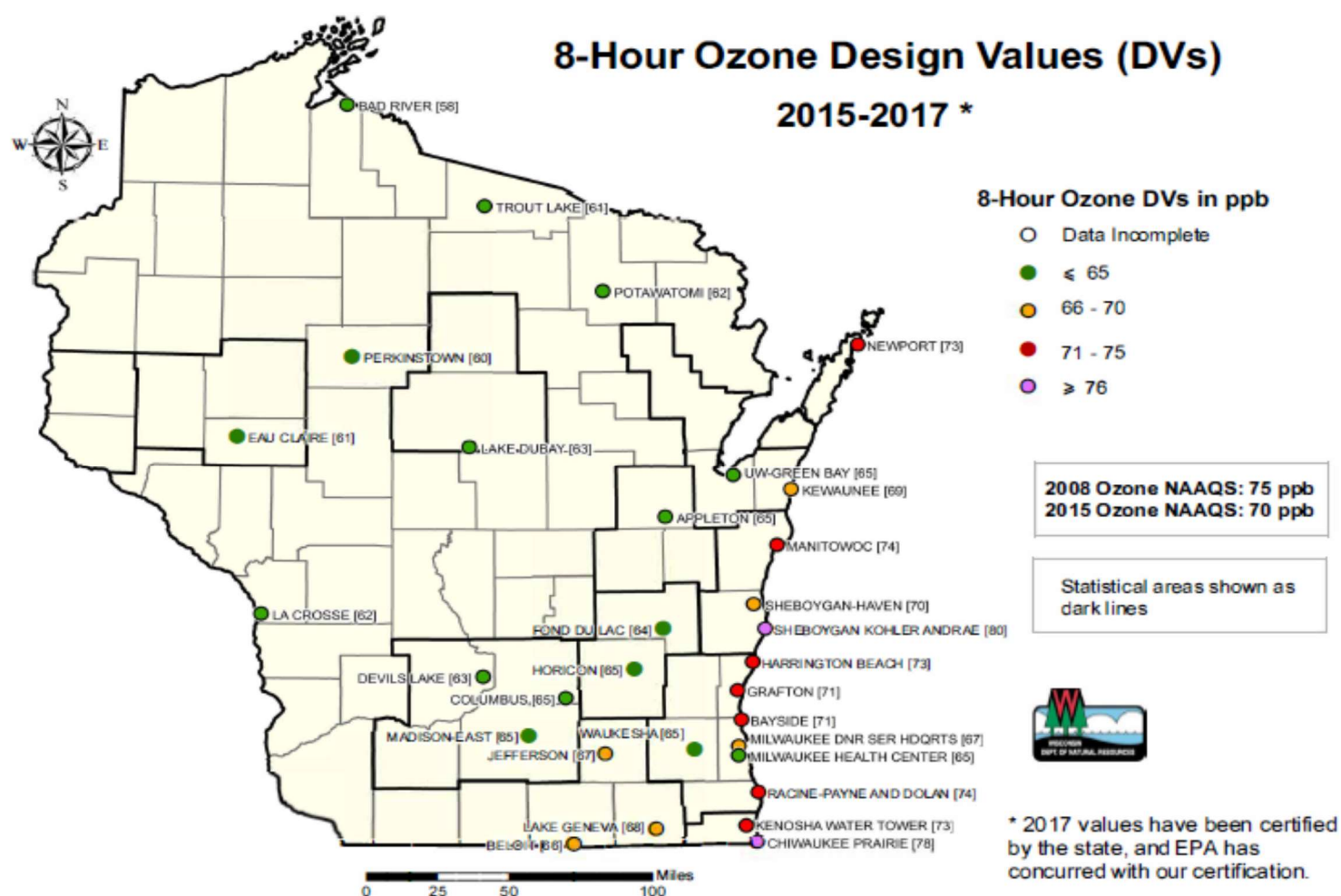
https://www3.epa.gov/airquality/greenbook/map/wi8_2008.pdf

If EPA finalizes this proposed deadline extension, stationary and mobile sources of pollutants that cause or contribute to violations of the 2008 ozone NAAQS in Sheboygan County would not be required to reduce emissions until July 2019. Consequently, Clean Wisconsin members and other Sheboygan County residents would continue to be exposed to unhealthy ozone levels that exceed the 2008 ozone NAAQS of 0.075 ppm – exacerbating asthma attacks and other serious respiratory symptoms during yet another ozone season. As set forth more fully below, WDNR’s request to extend the deadline for Sheboygan County to attain the 2008 ozone NAAQS is contrary to the Clean Air Act and to 40 CFR 51.1107. EPA therefore must deny this request, allow Sheboygan County to be classified as a “serious” nonattainment area, and require increased efforts to reduce emissions that cause or contribute to continued nonattainment of the 2008 ozone NAAQS.²

² Areas in “serious” ozone nonattainment are required to implement additional emission reduction measures that are included in state implementation plans, beyond those required of “moderate” nonattainment areas, including for example, enhanced monitoring and enhanced vehicle inspection and maintenance programs. 42 U.S.C. § 7511a(c); *id.* §§ 7511a(c)(1), (3).

Sheboygan County is a 2008 Ozone NAAQS Nonattainment Area

WDNR concedes that Sheboygan County failed to attain the 2008 ozone NAAQS of 0.075 ppm by the July 20, 2018 deadline.³ EPA's determination of nonattainment is based upon data that have been collected and quality-assured in accordance with 40 CFR part 58 and recorded in EPA's Air Quality System database. <https://www.epa.gov/aqs>. Ambient air quality monitoring data for the 3-year period preceding the attainment deadline (which for 2008 ozone NAAQS Moderate areas is the period from 2015-2017) shows that the "design value"⁴ for one of the two air quality monitors in Sheboygan County is 80 ppm --- which clearly exceeds the 2008 ozone NAAQS of 0.075 ppm.



³ Good, Gail, Director, Air Management Program Wisconsin Department of Natural Resources letter to US EPA dated May 24, 2018.

⁴ The 2008 ozone standard design value for an area is the statistic derived from the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration in parts per million. The design value is calculated for each monitor in the area, and the area's design value is the highest value calculated for the area.

EPA's Proposal to Approve WDNR's Request for a 1-year Extension for Sheboygan County to Attain the 2008 Ozone NAAQS

WDNR attempts to justify the agency's request for a 1-year extension for Sheboygan County to meet the 2008 ozone NAAQS by asserting that all Clean Air Act section 181(a)(5)(A) requirements⁵ and commitments under the applicable implementation plan for Sheboygan County have been met. See 83 Fed. Reg. 56787. Additionally, EPA proposes to find that Sheboygan County is eligible for an extension under Clean Air Act section 181(a)(5)(B), which states that a 1-year extension can be granted where "no more than one exceedance of the national ambient air quality standard level for ozone has occurred in the area in the *year preceding the Extension Year*." 42 U.S.C. 7511(a)(5)(B) (emphasis added); see also 40 C.F.R. 51.1107.

EPA's proposed approval of WDNR's extension request, assumes that the "year preceding the Extension Year" is *calendar year* 2017. 83 Fed. Reg. 56786/3-56787/1 (noting that "the fourth highest daily maximum 8-hour average ozone concentration recorded during the *attainment year (2017)* did not exceed the 2008 ozone NAAQS of 0.075 ppm."). However, neither the Clean Air Act nor related implementation rules define the Extension Year or the year preceding the Extension Year, as a calendar year. In fact, since compliance is determined as of the July 2018 deadline and the extension is sought until July 2019, the Extension Year clearly runs from July 2018 to July 2019, and the year preceding the Extension Year runs from July 2017 to July 2018. The relevant monitoring data for making the section 181(a)(5)(B) determination are, therefore, data gathered from July 2017 to July 2018.

Based on a review of the information submitted by WDNR, EPA is proposing to determine that all requirements for a 1-year attainment date extension have been met. 83 Fed. Reg. 56787/2. If EPA finalizes this proposed action, upon the effective date of the final action, the attainment date for Sheboygan County would be extended to July 20, 2019, and the County would remain classified as a "moderate" nonattainment area throughout the extension period. *Id.* EPA's proposed decision would allow Sheboygan County to avoid reclassification by operation of law to "serious" nonattainment for the 2008 ozone NAAQS. 42 U.S.C. § 9511(b)(2); see also, 83 Fed. Reg. at 56785/ 2-3 (describing applicability to Sheboygan and citing 81 Fed. Reg. 91841 (Dec. 19, 2016), 81 Fed. Reg. 26697 (May 4, 2016)).

EPA's Proposed 1-Year Extension for Sheboygan County Does Not Meet Statutory or Regulatory Eligibility for an Extension

EPA proposes to determine that Sheboygan County qualifies for a 1-year extension because EPA has concluded that there has been no exceedance of the 2008 ozone standard in the year prior to the Extension Year because the fourth highest daily 8-hour ozone concentration from monitors in Sheboygan County did not exceed 0.075 ppm during the 2017 *calendar year*. 83 Fed. Reg. 56787. EPA's proposal to approve WDNR's request for an extension is contrary to the plain language of the

⁵Clean Air Act section 181(a)(5), 42 U.S.C. §7511(a)(5) allows a one year extension (the Extension Year) of the attainment deadline on application of a state "if – (A) the state has "complied with all requirements and commitments pertaining to the area in the applicable implementation plan, and (B) no more than one exceedance of the national ambient air quality standard for ozone has occurred in the area in the year preceding the Extension Year." 42 U.S.C. § 7511(a)(5).

Clean Air Act and EPA's own rules relating to extensions of nonattainment deadlines. Moreover, EPA and WDNR are arbitrarily ignoring data which makes clear that efforts to reduce ozone levels in Sheboygan County should be accelerated, rather than delayed.

The phrase "year preceding the Extension Year" is not defined either in the Clean Air Act or in the related implementation rule as a "calendar year." See 42 U.S.C. §7511(a)(5); 40 CFR 51.1107.⁶ In fact, as Sheboygan County's attainment deadline was July 20, 2018, a reasonable interpretation of any ambiguity in the language "year preceding the Extension Year" would require that attainment status must be analyzed based on monitoring data gathered from July 20, 2017 to July 20, 2018 -- absent some other statutory or regulatory definition limiting the analysis to "calendar years." Because there is no such definition, EPA must consider air quality monitoring data collected in Sheboygan County from July 20, 2017 through July 20, 2018 to determine the County's eligibility for an extension.

During the "year preceding the Extension Year" (July 20, 2017 to July 20, 2018), one of the Sheboygan County monitors recorded several violations of the 0.075 ppm 2008 ozone NAAQS -- including a "4th highest daily maximum 8-hour average for that year" of 0.081, which is well above the 2008 ozone standard:

**SHEBOYGAN COUNTY 2008 OZONE NAAQS NONATTAINMENT AREA
FOURTH MAXIMUM REPORT⁷
(7/20/17 – 7/20/18)**

Rolling Average Maximum Ozone Levels	5/25/18	5/27/18	6/29/18	7/13/18
Sheboygan Kohler Andrea ozone monitor (551170006)	0.094 ppm	0.081 ppm	0.085 ppm	0.083 ppm

These data show that Sheboygan County is not eligible for an extension under Clean Air Act section 181(a)(5)(B) because "more than one exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year." 42 U.S.C. 7511(a)(5)(B). These data also show that Sheboygan County fails to qualify for an extension pursuant to 40 C.F.R. 51.1107 because the area's 4th highest daily maximum 8-hour average in the relevant attainment year

⁶40 CFR 51.1107 reads as follows:

(a) A nonattainment area will meet the requirement of CAA section 181(a)(5)(B) pertaining to 1-year extensions of the attainment date if:

(1) For the first 1-year extension, the area's 4th highest daily maximum 8 hour average in the attainment year is 0.075 ppm or less.

(2) For the second 1-year extension, the area's 4th highest daily maximum 8 hour value, averaged over both the original attainment year and the first extension year, is 0.075 ppm or less.

(b) For purposes of paragraph (a) of this section, the area's 4th highest daily maximum 8 hour average for a year shall be from the monitor with the highest 4th highest daily maximum 8 hour average for that year of all the monitors that represent that area.

⁷<https://dnrx.wisconsin.gov/wisards/webreports/generateAdvancedReports.do>

is not 0.075 ppm or less. 40 C.F.R. 51.1107. No rational decision maker would ignore this air quality monitoring data – which demonstrates that Sheboygan County does not meet the legal requirements for an extension *and* that there is an urgent need accelerate (not delay) measures to address unhealthy ozone levels in Sheboygan County.

Conclusion

Clean Wisconsin opposes EPA's proposal to grant WDNR's request for a 1-year extension for Sheboygan County's compliance with the 2008 ozone NAAQS. Once again, WDNR seeks to delay air quality protections for Sheboygan County residents by another year, as it did prior to the County's bump up to "moderate" attainment status in 2016. A full decade after adoption of the 2008 standard, WDNR impermissibly seeks another delay, despite *increasing* monitored levels of ozone pollution that exceed the 2008 standard. EPA must not grant this extension as it is contrary to law, unreasonable, and arbitrary and capricious.

Clearly, additional measures are needed to bring Sheboygan County into attainment, and those measures would be required if the County were to be bumped up to "serious" nonattainment status by operation of law – which is the precise outcome this proposal would avoid, if finalized. Rather than proposing to further *delay* additional steps towards attainment in Sheboygan County, WDNR and EPA should be *accelerating* efforts to bring Sheboygan County into attainment with the 2008 ozone NAAQS. Further delay means Sheboygan County residents will continue to be exposed to unhealthy ozone levels that trigger asthma attacks and other respiratory symptoms until at least July 20, 2019.

EPA's proposal to grant WDNR's request for an extension is contrary to the Clean Air Act and 40 CFR 51.1107 -- and is also contrary to the public interest. EPA cannot turn a blind eye to data which clearly show that monitored ozone levels continue to *increase* in Sheboygan County. EPA must deny WDNR's request for a 1-year extension for Sheboygan County to attain the 2008 ozone NAAQS and should instead require stationary and mobile sources to further reduce emissions that cause or contribute to ozone nonattainment in Sheboygan County.

This 14th day of December, 2018.

Respectfully submitted,



Susan Hedman, Of Counsel
Clean Wisconsin
634 W. Main Street #300
Madison, WI 53703
shedman@cleanwisconsin.org

/ s / (sh)

Ann Brewster Weeks, Of Counsel
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
aweeks@catf.us