

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

STATE OF WISCONSIN,	)	
	)	
<i>Petitioner,</i>	)	
	)	
v.	)	
	)	
UNITED STATES	)	Case No. 25-1239
ENVIRONMENTAL PROTECTION	)	
AGENCY and LEE ZELDIN,	)	
Administrator,	)	
	)	
<i>Respondents.</i>	)	
	)	

**CLEAN WISCONSIN AND SIERRA CLUB’S CONTINGENT MOTION TO
DISSOLVE STAY, FOR SUMMARY DISPOSITION OR, IN THE
ALTERNATIVE, EXPEDITED BRIEFING, AND TO LIFT THE
ABEYANCE**

Pursuant to Federal Rule of Appellate Procedure 26, and contingent on the Court granting their pending intervention request,¹ Clean Wisconsin and Sierra Club (collectively “Public Interest Organizations”) respectfully submit this motion (“Motion”) to dissolve the judicial stay of the U.S. Environmental Protection

¹ ECF No. 31.

Agency's ("EPA") final rule reclassifying the Milwaukee, Kenosha,² and Sheboygan nonattainment areas (collectively the "Nonattainment Areas") from a Moderate to Serious classification because those areas failed to attain the 2015 Ozone National Ambient Air Quality Standards ("2015 Ozone Standard"). 89 Fed. Reg. 101901 (Dec. 17, 2024) (hereinafter "Reclassification Action"). All factors that this Court would consider in determining whether to continue the stay favor dissolution.

First, the State of Wisconsin's challenge has no chance of success on the merits. Second, the Public Interest Organizations' members are and will continue to be irreparably harmed by worsening ozone pollution if this Court maintains the stay. Third, the public interest supports dissolution of the stay because air quality in the Nonattainment Areas has been exceeding the federal standards for years and likely will get worse without the Reclassification Action. Finally, neither Wisconsin nor EPA will be substantially injured if the stay were lifted.

This motion also seeks summary affirmation of the Reclassification Action and summary dismissal of the petition for review because Petitioner Wisconsin's challenge so clearly lacks merit that summary disposition is appropriate. Under the

² Kenosha County, Wisconsin, is part of the multi-state Chicago, IL-IN-WI nonattainment area. References to "Kenosha" throughout the Motion refer only to the Wisconsin portion of this nonattainment area.

Clean Air Act (“Act”), determinations of compliance with ozone standards are based exclusively on the air monitoring data, meaning that only one outcome was possible after the Nonattainment Areas failed to meet the 2015 Ozone Standard by the August 3, 2024, attainment deadline: the automatic reclassification, by operation of law, of the Areas to Serious. Wisconsin certified that the air monitoring data was accurate and does not dispute it. Thus, none of the issues that Wisconsin raises (or could raise) can change the outcome the Act compelled here.

Dissolving the stay and dismissing the petition for review ensures that the much-needed pollution reductions required by the Reclassification Action can take effect as soon as possible. To the extent the Court deems this dispute ready for briefing but not summary disposition, this motion requests, in the alternative, expedited briefing and argument. The next attainment date of August 3, 2027, is fast approaching, so resolution is needed now if the Areas have any hope for meaningful emission reductions before then.

To the extent the Court deems it necessary to effectuate the above requested relief, this motion also seeks to have the abeyance lifted for purposes of granting all relief the Court deems appropriate.

Petitioner State of Wisconsin will oppose this Motion. Respondent EPA reserves its position on the Motion.

BACKGROUND

I. Ozone Regulation Under the Clean Air Act

The Clean Air Act directs EPA to establish National Ambient Air Quality Standards (“NAAQS”) to safeguard public health from dangerous air pollution, including ozone, and requires states to take the actions necessary to attain and maintain those standards. *Murray Energy Corp. v. EPA*, 936 F.3d 597, 604 (D.C. Cir. 2019) (upholding the 2015 Ozone Standard). Ground-level ozone—commonly known as smog—forms when volatile organic compounds (“VOCs”) and nitrogen oxides (“NOx”) react together in sunlight. *Id.* at 605. These so-called ozone precursors are emitted from stationary sources of air pollution, such as power plants and industrial facilities, and mobile sources, such as light- and heavy-duty vehicles and off-road vehicles. *See id.*

Ozone pollution causes a slew of harmful short-term and long-term health effects, as documented by voluminous scientific research and studies spanning the past several decades. *See* 80 Fed. Reg. 65292, 65302 (Oct. 26, 2015) (documenting the breadth of public health research on ozone pollution in support of EPA’s final rule adopting the 2015 Ozone Standard). Short-term exposure to ozone pollution can damage the lungs, causing breathing problems, asthma attacks, and increased hospital visits; repeated exposure over time contributes to ongoing and long-term

respiratory injury and a heightened risk of premature death, especially among children, older adults, and people with respiratory disorders. *Id.* at 65303-11.

When areas of the country are not meeting the 2015 Ozone Standard, like the three Nonattainment Areas at issue here, the Clean Air Act has a “graduated classification scheme” that classifies these areas as either Marginal, Moderate, Serious, Severe, or Extreme. *Sierra Club v. EPA*, 47 F.4th 738, 741 (D.C. Cir. 2022); 42 U.S.C. § 7511(a)(1). Under this scheme, each time a nonattainment area fails to attain an ozone standard by its required attainment date, the area is “bumped” to a higher classification by operation of law, and the requirements of higher classifications build upon the requirements of lower classifications. 42 U.S.C. § 7511(b)(2); *Nat. Res. Def. Council v. EPA*, 777 F.3d 456, 460 (D.C. Cir. 2014) (“[A]reas that fail to attain the NAAQS by the statutory deadline are automatically reclassified to the next highest classification.”). Thus, as an area continues to have poor air quality, the state will have to integrate increasingly rigorous air quality protective measures in its state implementation plan (“SIP”) to reduce the area’s air pollution. *Sierra Club*, 47 F.4th at 741.

II. EPA’s Reclassification Action and History of Noncompliance in the Milwaukee, Kenosha, and Sheboygan Nonattainment Areas.

In 2015, EPA promulgated the 2015 Ozone Standard at 70 parts per billion. 80 Fed. Reg. at 65292. This triggered the requirement for EPA to designate

areas of the country as nonattainment, attainment, or unclassifiable under the new Ozone Standard. 42 U.S.C. § 7407(d). In 2018, EPA designated parts of Sheboygan, Kenosha, Milwaukee, and Ozaukee Counties as nonattainment. 83 Fed. Reg. 25776 (June 4, 2018). In response to a successful Clean Wisconsin challenge to those designations as arbitrary and too small geographically, EPA expanded the geographic scope of the Wisconsin nonattainment areas. *See* 86 Fed. Reg. 31438 (June 14, 2021); *see also Clean Wisconsin v. EPA*, 964 F.3d 1145 (D.C. Cir. 2020).

The three Wisconsin Nonattainment Areas have repeatedly failed to attain the 2015 Ozone Standard. The Areas were first designated as nonattainment with a “Marginal” classification in 2018 and an attainment deadline of August 3, 2021. 83 Fed. Reg. 25776, 25845 (June 4, 2018). The Areas failed to meet the 2015 Ozone Standard by the Marginal attainment deadline and were automatically reclassified by operation of law to Moderate, with a new attainment deadline of August 3, 2024. 87 Fed. Reg. 60897, 60925 (Oct. 7, 2022). The Areas again failed to attain the standard by the Moderate deadline and were subsequently reclassified by operation of law to Serious in the challenged Reclassification Action, with a new attainment deadline of August 3, 2027. 89 Fed. Reg. at 101905.

The Clean Air Act provides that EPA can only consider an area’s design

value to determine compliance with the NAAQS. 42 U.S.C. § 7511(b)(2)(A). A design value is the average of the fourth-highest 8-hour concentration of ozone in a year, averaged over a 3-year period, meaning that attainment must occur no later than December 31 of the year prior to the attainment date. *See* 40 C.F.R. Part 50, Appendix I. That means EPA looked at the 2021-2023 design value³ for the Wisconsin Areas to determine compliance with the attainment deadline of August 3, 2024. The table below shows the calculations for select monitors in the three Nonattainment Areas' 2023 design values⁴ in EPA's Reclassification Action:

AQS Site ID	Nonattainment Area (County)	Fourth highest daily maximum 8-hour average ozone concentration (ppb)			2021-2023 design value (DV) (ppb)
		2021	2022	2023	
55-117-0006	Sheboygan	73	77	82	77
55-079-0085	Milwaukee	72	74	76	74
55-059-0019	Kenosha	79	70	84	77

On December 17, 2024, because the 2023 design values for each area violated the 2015 Ozone Standard, EPA determined that the Areas had failed to attain by the August 3, 2024, deadline. 89 Fed. Reg. at 101905. The Clean Air Act thus compelled only one possible outcome: reclassify the Nonattainment Areas to

³ For simplicity, the remaining references to the design value in this Motion will be just to the last year of the three-year calculation. So a "2023 design value" means the design value comprised of the years 2021, 2022, and 2023.

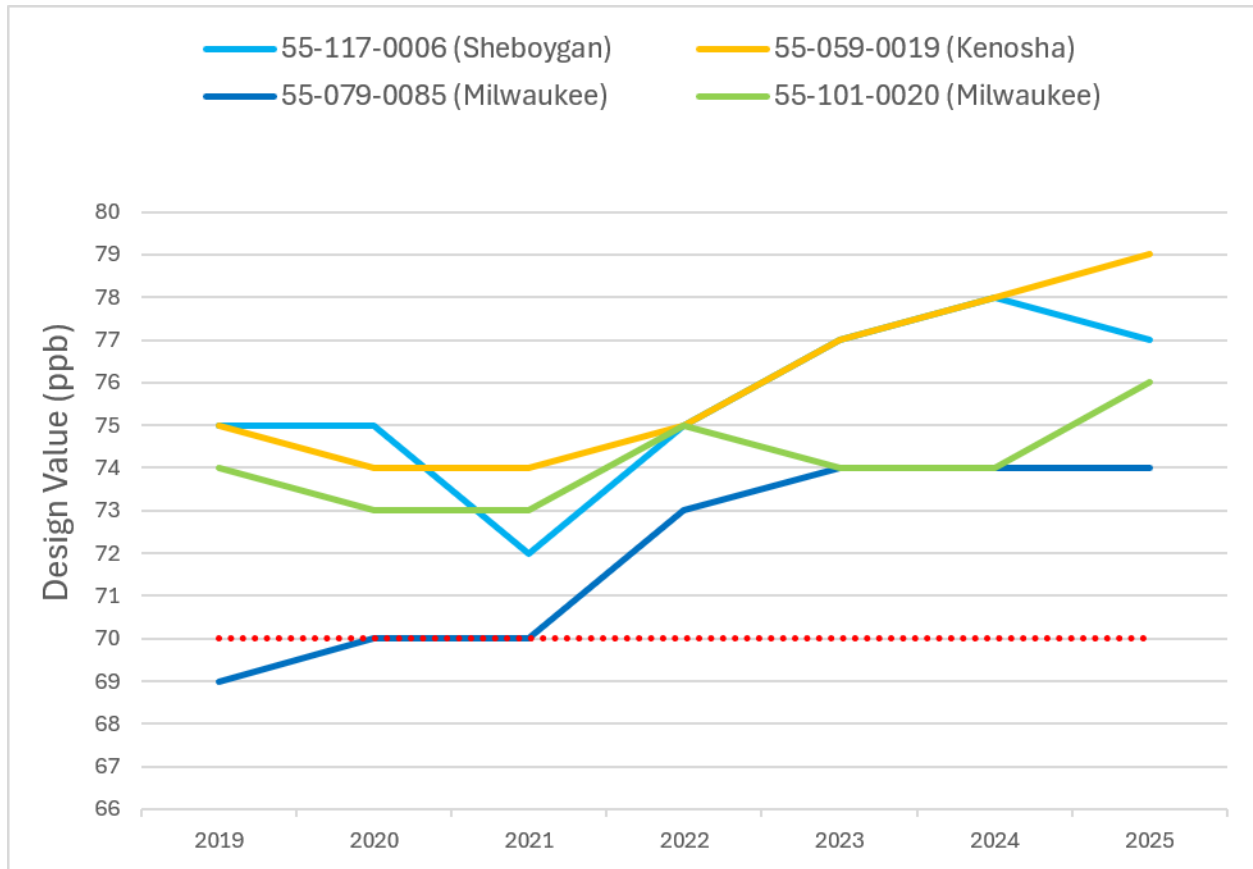
⁴ Reclassification Action, Tables 4, 6, and 8. *See* 89 Fed. Reg. at 101904-05.

Serious. 42 U.S.C. § 7511(b)(2). The upcoming Serious attainment deadline is August 3, 2027. 89 Fed. Reg. 101901, 101902.

III. Air Quality Continues to Deteriorate in the Three Nonattainment Areas.

About one-third of Wisconsin residents live in the counties comprising the three Nonattainment Areas. Gallagher Decl. ¶ 14, Ex. A. In the Reclassification Action, EPA relied on “certified” air quality data, which refers to the data submitted by Wisconsin—data which the State lead official must attest is “accurate to the best of her or his knowledge.” 89 Fed. Reg. 101901; 40 C.F.R. § 58.15(a). More recent, Wisconsin-certified air quality data since 2023 shows that ozone pollution levels in these areas are worsening. Gallagher Decl. ¶¶ 19-21. The graph and table below show ozone design value trends for the three Nonattainment Areas from 2019 through 2025, based on EPA’s Ozone Watch tool.⁵ Gallagher Decl. ¶¶ 19-21.

⁵ U.S. EPA, OZONE WATCH, <https://www.epa.gov/outdoor-air-quality-data/ozone-watch> (last accessed August 25, 2026).



AQS Site ID	Nonattainment Area (County)	Design Value (ppb)						
		2017-2019	2018-2020	2019-2021	2020-2022	2021-2023	2022-2024	2023-2025
55-117-0006	Sheboygan	75	75	72	75	77	78	77
55-059-0019	Kenosha	75	74	74	75	77	78	79
55-079-0085	Milwaukee	69	70	70	73	74	74	74
55-101-0020 ⁶	Racine	74	73	73	75	74	74	76

⁶ Because of the D.C. Circuit's 2020 decision partially vacating EPA's designations for the Wisconsin area, EPA drew a larger boundary for the Milwaukee nonattainment area to include Racine County, which is where AQS Site ID 55-101-0020 is located (Racine - Payne And Dolan, 4500 Charles St.). 86 Fed. Reg. 31438 (June 14, 2021); *Clean Wisconsin v. EPA*, 964 F.3d 1145 (D.C.

Based on EPA's Benefits Mapping and Analysis Program ("BenMAP"), the public health costs associated with 2015 Ozone Standard violations are significant in the three areas. Ozone levels above the federal standard in these three Nonattainment Areas results in 2 to 4 excess deaths per year and health harms ranging from \$88,600,000 to \$112,000,000 annually. Gallagher Decl. ¶¶ 15-16.

STANDARD OF REVIEW

The Court can always revisit whether an existing stay is still justified. *Aristy-Rosa v. Att'y Gen. of the U.S.*, No. 25-1490, 2026 WL 2363039, at *2 (3d Cir. Aug. 14, 2026) ("A stay is not forever. Circumstances change."); The party seeking continuation of a stay "bears the burden of showing his entitlement to a stay." *Latta v. Otter*, 771 F.3d 496, 498 (9th Cir. 2014). Because the existing stay of the Reclassification Action was entered without adversarial briefing or a decision by the Court on the merits of a stay, the Court should apply the same test when deciding whether to continue the stay.

Generally, courts will consider four factors when assessing whether a stay is appropriate: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the

Cir. 2020);

other parties interested in the proceeding; and (4) where the public interest lies.”

Nken v. Holder, 556 U.S. 418, 426 (2009); *see also Venckiene v. United States*, 929 F.3d 843, 853 (7th Cir. 2019) (applying *Nken* stay test). “The [stay] standard calls for equitable balancing, much like that required in deciding whether to grant a preliminary injunction or a temporary restraining order.” *Venckiene*, 929 F.3d at 853. Ultimately, “[a] stay is not a matter of right, and its issuance depends on the circumstances of a particular case.” *Nken*, 556 U.S. at 434. These same factors are at issue when courts are considering whether to dissolve a stay. *See Mass. Bldg. Trades Council v. U.S. DOL (In re MCP No. 165)*, 21 F.4th 357, 368 (6th Cir. 2021) (discussing the traditional stay factors in the context of a motion to dissolve the stay).

Summary disposition is an appropriate tool “when the position of one party is so clearly correct as a matter of law that no substantial question regarding the outcome of the appeal exists.” *Williams v. Chrans*, 42 F.3d 1137, 1139 (7th Cir. 1995) (citing *Joshua v. United States*, 17 F.3d 378, 380 (Fed. Cir. 1994)). Put another way, summary disposition may be used when “any issues which could be raised are insubstantial and ... further briefing would not be helpful to the court’s consideration of the issues.” *Walker v. Nat’l Collegiate Athletic Ass’n*, No. 19-2638, 2019 WL 8058082, at *1 (7th Cir. Oct. 25, 2019); *Mather v. Village of*

Mundelein, 869 F.2d 356, 357 (7th Cir. 1989) (*per curiam*) (stating that this Court can decide case on motions, papers, and the record where briefing would not assist the court and where no member of the panel believes that briefing or argument would be useful).

ARGUMENT

Petitioner Wisconsin cannot show that the circumstances underlying this case justify a continued stay of the Reclassification Action. First, Wisconsin has not shown likelihood of success on the merits because the Clean Air Act requires automatic reclassification for any areas that fail to meet the NAAQS, thus making EPA's Reclassification Action non-discretionary and obviating the need for public notice and comment. Second, the Public Interest Organizations and their members are substantially and irreversibly injured by a continued stay of the Reclassification Action. Third, the public interest in clean air supports dissolving the stay and ensuring that Wisconsin implements the Action's more rigorous environmental protections. Finally, Wisconsin cannot use the costs of compliance with the law to justify a stay because such costs are not irreparable injuries. Dissolution of the stay will not harm EPA because the agency would have to eventually defend the Reclassification Action either way. Therefore, the *Nken* factors all favor dissolution of the stay.

I. Petitioner Wisconsin Has No Chance of Success On the Merits.

A. The Clean Air Act Compelled Reclassification By Operation of Law, Meaning EPA Lacked Discretion to Promulgate Any Action But the Reclassification Action.

When any nonattainment area's air quality fails to attain a national ozone standard by the applicable attainment deadline, the Clean Air Act compels only one possible outcome: automatic reclassification by operation of law to the next more stringent classification level. 42 U.S.C. § 7511(b)(2). The Act's "Reclassification upon failure to attain" provision, often referred to as "mandatory reclassification," states in relevant parts: "Within 6 months following the applicable attainment date... for an ozone nonattainment area, the Administrator shall determine, based on the area's design value (as of the attainment date), whether the area attained the standard by that date." *Id.* § 7511(b)(2)(A). The provision then commands that "any area that the Administrator finds has not attained the standard by that date shall be reclassified by operation of law... to... the next higher classification for the area." *Id.*

Based on air quality data, the three Nonattainment Areas failed to attain the 2015 Ozone Standard by the August 3, 2024, Moderate attainment deadline. 89 Fed. Reg. at 101901-02. The Clean Air Act thus compelled only one possible outcome: automatic reclassification by operation of law from Moderate to Serious

nonattainment. *Id.* As explained in the Reclassification Action, EPA determined that there was “good cause for making this final agency action without prior proposal and opportunity for comment because [their] action to determine whether these areas have attained the NAAQS by the attainment date is governed, per CAA section 181(b)(2)(A), solely by area design values as of that date.” *Id.* at 101905. In other words, automatic reclassification in the present case was mandated by the plain language of the Clean Air Act.

Congress afforded EPA’s no discretion in this context. The Act states that mandatory reclassification by operation of law is based solely on the monitored air quality in a nonattainment area and the resulting design value at the time of the attainment deadline. 42 U.S.C. § 7511(b)(2). And EPA confirms this interpretation of the Act, explaining that “[t]he area design values relied upon in this determination are calculations based on the certified air quality monitoring data governed by EPA’s regulations and involve no judgment or discretion.” 89 Fed. Reg. at 101905-06. EPA’s reference to “certified” air quality data⁷ refers to the

⁷ The certified air quality data submitted by Wisconsin is part of the administrative record for the Reclassification Action. *See* Certified Index to the Administrative Record, ECF No. 28, at page 4-5 (filed April 27, 2026) (citing “2021 Wisconsin Ambient Air Monitoring Early Data Certification for Select Ozone Monitors,” Document ID EPA-R05-OAR-2024-0546-0005; “2021 Wisconsin Ambient Air Monitoring Data Certification – Criteria Network Data,” Document ID EPA-R05-OAR-2024-0546-0008; “2022 Wisconsin Ambient Air Monitoring Data

data annually submitted by Wisconsin—data which the State lead official must attest is “accurate to the best of her or his knowledge”— to EPA and meets the certification requirements found in 40 C.F.R. § 58.15. 40 C.F.R. § 58.15(a) (requiring the State to submit monitored ambient concentration data from all monitors in the state).

The history of Clean Air Act Section 7511(b)(2) explains why Congress removed EPA’s discretion. The 1990 Amendments to the Clean Air Act included Section 7511, which “abandoned the discretion-filled approach of two decades prior in favor of more comprehensive regulation.” *S. Coast Air Quality Mgmt. Dist. v. E.P.A.*, 472 F.3d 882, 887 (D.C. Cir. 2006). Accordingly, “Congress adopted a graduated classification scheme that prescribed mandatory controls that each state must incorporate into its SIP.” *Id.* (noting specifically that Congress was “[n]o longer willing to rely upon EPA’s exercise of discretion”). Thus, “[a]reas that failed to meet a deadline were to be reclassified to a higher classification automatically.” *Id.*

Certification – Criteria Network Data,” Document ID EPA-R05-OAR-2024-0546-0011; “2023 Wisconsin Ambient Air Monitoring Data Certification – Criteria Network Data,” Document ID EPA-R05-OAR-2024-0546-0014). EPA’s calculation of design values for the Areas at issue was based on this certified data submitted by Wisconsin. 89 Fed. Reg. at 101904-06; *see also* Document ID EPA-R05-OAR-2024-0546-0001.

At bottom, Wisconsin certified the accuracy of its air quality data, EPA relied on that data to calculate the Nonattainment Areas' design values, and those values showed all three Areas failed to attain by the August 3, 2024, deadline. Thus, the Clean Air Act commanded only one possible outcome: reclassification of the Areas from Moderate to Serious.

B. Wisconsin Cannot Raise Any Issue Warranting Vacatur of the Reclassification Action.

There are no rationales that would justify vacating the Reclassification Action, largely because that Action merely implements the Clean Air Act's mandatory reclassification scheme. Thus, any challenges Wisconsin could raise to the underlying monitoring data used in the Reclassification Action are untimely.

Wisconsin instead only raises two irrelevant challenges to the Reclassification Action: (1) it argues that EPA did not comply with the notice-and-comment requirements of the Administrative Procedure Act ("APA"), and (2) that EPA's final rule is arbitrary and capricious and thus violates the APA because it failed to account for out-of-state ozone as part of its determination. State of Wisconsin's Mot. to Stay the Final Rule at 12-20, ECF No. 12 (filed Aug. 15, 2025). Both challenges have no chance of success on the merits.

On whether EPA should have conducted notice-and-comment rulemaking, there is good cause under the APA to excuse such procedures. 5 U.S.C. §

533(b)(4)(B) (excusing public notice and comment “when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest”). The Clean Air Act states that reclassification must be based only on the Wisconsin-certified air quality data, which showed that the Areas did not meet the 2015 Ozone Standard. 42 U.S.C. § 7511(a)(2); 89 Fed. Reg. at 10190410190-06. The mandatory reclassification provision of the Act does not allow EPA to consider other issues when reclassifying an area. Thus, notice and comment procedures were unnecessary and impracticable here.

EPA offered a reasoned explanation for forgoing notice and comment procedures which is consistent with the APA’s statutory command. 89 Fed. Reg. at 101905-06 (stating that “[t]he area design values relied upon in this determination are calculations based on the certified air quality monitoring data governed by EPA’s regulations and involve no judgment or discretion”). EPA has complied with its obligations under the Clean Air Act and the APA as they relate to this Reclassification Action. And, alternatively, any error is harmless given the Act’s constraint on what EPA can consider. *See Liapis v. Bisignano*, 180 F.4th 946, 953 (7th Cir. 2026) (“The harmless error standard applies to judicial review of administrative decisions.”).

When an agency makes “policy judgments where no factual certainties exist or where facts alone do not provide the answer,” a court reviews that action to ensure the agency adequately explained itself and the procedures used. *Lead Indus. Ass’n, Inc. v. EPA*, 647 F.2d 1130, 1147 (D.C. Cir. 1980) (citing *Indus. Union Dep’t, AFL-CIO v. Hodgson*, 499 F.2d 467, 475-76 (D.C. Cir. 1974)). But here, factual certainty does exist, and the facts alone do provide the answer: Wisconsin-certified air quality data showed that the three Nonattainment Areas did not meet the 2015 Ozone Standard; therefore, the Act compelled reclassification. Because the statute compels the Reclassification Action, the lack of notice-and-comment is permissible.

Wisconsin’s other challenge has no chance of success either. The Reclassification Action did not need to account for out-of-state ozone transport (i.e., ozone pollution emitted upwind and traveling interstate to Wisconsin’s air monitors) because the Clean Air Act does not allow EPA to take that information into account when making a reclassification decision. 42 U.S.C. § 7511(b)(2). The Act does not exempt pollution from any source, be it interstate air pollution or otherwise, from mandatory reclassification. Thus, EPA cannot be faulted for not accounting for facts that would not—and cannot—change the outcome. The Act would have compelled the same outcome no matter the nature or amount of

interstate air pollution. *Lead Indus. Ass’n, Inc.*, 647 F.2d at 1147.

While Wisconsin is understandably concerned about interstate air pollution, and while the Act’s mandatory reclassification provision provides no reprieve based on interstate air pollution, the Act does provide other means to address this issue. For example, under the Act’s “Good Neighbor” provision, upwind states that significantly contribute ozone pollution to Wisconsin’s Nonattainment Areas must adopt pollution restrictions that reduce those emissions. 42 U.S.C. § 7410(a)(2)(D); *State of Wisconsin v. EPA*, 938 F.3d 303, 313 (D.C. Cir. 2019) (“[U]nder the terms of the Good Neighbor Provision, upwind States must eliminate their significant contributions.”). Wisconsin can also submit a Clean Air Act Section 126(b) petition to EPA, which allows: “Any State or political subdivision [to] petition the [EPA] Administrator for a finding that any major source or group of stationary sources emits or would emit any air pollutant in violation of the prohibition of [the Good Neighbor provision].” 42 U.S.C. § 7426(b). Wisconsin cannot do is commandeer the Act’s narrow reclassification provision to address interstate pollution, especially considering that there are other mechanisms in the Act to address those issues.

At bottom, no issue thus far raised by Wisconsin can succeed on the merits nor could any other issue not yet raised. Therefore, the stay should be dissolved so

that the planning needed to achieve much-needed emission reductions required by the Reclassification Action can begin. For the same reasons, because the chance of success on the merits is nonexistent, the Court should summarily affirm the Reclassification Action and summarily dismiss the State's petition for review.

II. The Other Stay Factors Support Dissolution and Summary Disposition.

A. The Public Interest Organizations and Their Members Suffer Substantial Harm Absent Dissolution of the Stay.

Public Interest Organizations and their members will be substantially and irreversibly harmed if the stay is not dissolved and the petition for review summarily dismissed. As explained above and in the Reclassification Action, the three Nonattainment Areas consistently failed to attain the 2015 Ozone Standard, which is a public health-based standard intended to protect the public from unhealthy air pollution. *Supra* BACKGROUND § II-III. The ozone air quality in the Areas continues to worsen over time, meaning that increasingly more stringent action is necessary to reduce ozone air pollution in the region. *Id.*; Gallagher Decl. ¶¶ 19-21. The Nonattainment Areas are home to thousands of the organizations' members, who all continue to suffer harm from high ozone pollution. Kelly Decl. ¶ 11, Ex. B; Ward Decl. ¶ 14, Ex. F; Gallagher Decl. ¶ 13-14.

Public Interest Organizations' members have suffered and continue to suffer ongoing injuries stemming from ozone pollution in these areas. *See* Hillringhouse

Decl. ¶¶ 4-7, 15-18, Ex. G; Radke Decl. ¶¶ 7-11, Ex. D; Ritger Decl. ¶¶ 5-10, Ex.

E. For example, Clean Wisconsin member Rebecca Clarke notices that, when ozone levels are high, she must stop taking walks with her dogs, gardening, and visiting Lake Michigan's beaches and instead take refuge indoors because "physical activities that are normally easy become significantly more difficult."

Clarke Decl. ¶¶ 15-18, Ex. C. "On days when ozone levels are high, I experience a heaviness in my chest, breathing difficulties, and an unusually fast heartbeat." *Id.* ¶ 16.

The Reclassification Action, if the stay is dissolved, could remedy these members' injuries because it will require Wisconsin to take steps to reduce emissions of ozone precursors in the three Nonattainment Areas. Clarke Decl. ¶¶ 14-26; Hillringhouse Decl. ¶¶ 4-7, 15-18; Radke Decl. ¶¶ 9-13; Ritger Decl. ¶¶ 5-10. The health harms to the organizations' members and others living in the Nonattainment Areas are significant: ozone levels above the 70 parts-per-billion standard result in an average of 2 to 4 excess deaths occur annually. Gallagher Decl. ¶¶ 15-16. And the annual public health harms from this excess pollution range from \$88,600,000 to \$112,000,000. *Id.* There is a real, human cost to the ongoing air quality problems in these areas. If this Court dissolves the stay and summarily dismisses the petition for review, the human cost of this ozone pollution

can be redressed.

B. The Public Interest in Clean Air and Healthy Communities Strongly Supports Dissolution of the Stay.

As explained above, air quality is degrading in these Nonattainment Areas. *Supra* BACKGROUND § II. In the face of persistent and worsening ozone pollution levels, the Reclassification Action and resulting Serious nonattainment classification would trigger ten new requirements and restrictions that would lead to reductions in ozone pollution in the Areas. *See* 42 U.S.C. § 7511a(c). Thus, the public’s interest in clean air—the purpose underpinning the Clean Air Act’s ozone program—strongly supports dissolving the stay. *See Sierra Club v. Franklin Cnty. Power of Illinois, LLC*, 546 F.3d 918, 936 (7th Cir. 2008) (explaining that public interest would support the injunction of an air permit that could result in “decreased emissions and improved public health, which would further a stated goal of the Clean Air Act.”); *see also* 42 U.S.C. § 7401(b)(1) (declaring that Clean Air Act’s purpose is “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare”).

As discussed above, over just a short period of exposure, ozone pollution can cause a range of lasting and irreversible health impacts and is especially harmful to certain at-risk populations like children, older adults, and people with respiratory disorders. *Supra* BACKGROUND §§ I, III; ARGUMENT § II.A. The public,

therefore, has a vested interest in minimizing ongoing ozone pollution in the Nonattainment Areas. As noted above, there are an estimated 2 to 4 excess deaths annually and public health harms up to \$112,000,000 incurred per year due to ozone levels above the standard. Gallagher Decl. ¶¶ 15-16. These harms show why the public interest strongly supports dissolution of the stay.

The three Nonattainment Areas are fast approaching the next attainment deadline of August 3, 2027, after which the Areas will be reclassified to Severe nonattainment if they do not meet the federal standards. Thus, necessary pollution reductions are needed now to meet the 2015 Ozone Standard, dissolving the stay and upholding the Reclassification Action ensures that the State will take appropriate steps to actively reduce ozone pollution in the region.

C. Wisconsin Faces No Irreparable Injury, Only Ordinary Costs of Complying with the Valid Exercise of Federal Law.

Wisconsin will face no irreparable injury if the stay is dissolved. In its motion to stay the Reclassification Action, Wisconsin indicated that the Action will require it to spend staff time and resources to prepare a revised state implementation plan to incorporate Serious nonattainment classification requirements. Mot. to Stay the Final Rule at 20-21, ECF No. 12. However, compliance costs associated with the Reclassification Action would not typically be considered irreparable injuries justifying a stay. *Am. Hosp. Ass'n v. Harris*, 625

F.2d 1328, 1331 (7th Cir. 1980) (noting that “injury resulting from attempted compliance with government regulation ordinarily is not irreparable”). Wisconsin’s other alleged injury concerning a loss of tax revenues due to compliance with the law requires a long chain of speculation and the unknown acts of third parties. *Cf. Bevis v. City of Naperville, Illinois*, 85 F.4th 1175, 1188 (7th Cir. 2023) (“[A] mere possibility of irreparable harm will not suffice.”); *Com. of Pa., by Shapp v. Kleppe*, 533 F.2d 668, 672 (D.C. Cir. 1976) (allegations of tax revenue loss insufficient to demonstrate standing). Even if the speculated events occur in the order alleged, they will not occur until potentially years *after* Wisconsin starts implementing the Reclassification Action’s requirements, thus not irreparable and can be planned for.

Wisconsin has known about its impending obligations under the Serious nonattainment reclassification since December 2024, and likely sooner, if you consider that the Reclassification Action is based on the 2023 design value for the areas, and preliminary design values showed violations of the 2015 Ozone Standard by the end of August 2023 in all three Nonattainment Areas. Plus, as the entity responsible for certifying air quality data, the State was aware of the stagnant or worsening ozone levels over the few years leading up to the 2023 design value and the Reclassification Action. Wisconsin could have begun

planning for the cost, time and resources needed to ensure compliance well in advance of the Reclassification Action.

III. To the Extent the Court Deems It Necessary, The Abeyance Should Be Lifted to Dissolve the Stay and Summarily Dismiss the Petition for Review, or, Alternatively, Order Expedited Briefing.

Abeyances are at the sole discretion of the courts, so this Court can, on this Motion, take the case out of abeyance to dissolve the stay and summarily dismiss Wisconsin's petition for review. In the Clean Air Act, Congress "emphatically declared a preference" for "immediate" judicial review of challenges to EPA actions. *Nat. Res. Def. Council v. EPA*, 643 F.3d 311, 320 (D.C. Cir. 2011) (quoting *Cement Kiln Recycling Coal. v. EPA*, 493 F.3d 207, 215 (D.C. Cir. 2007)).

If the Court determines that additional briefing is required in lieu of summary disposition, the Court should lift the abeyance and order expedited briefing for the reasons explained above. Expedited briefing is warranted here because of the worsening trajectory of ozone pollution levels in the Nonattainment Areas and the fast-approaching August 3, 2027, Serious attainment deadline. Resolution is, therefore, needed expeditiously, so that much-needed emission reductions can be planned and implemented before next year's ozone season.

While EPA and Wisconsin requested abeyance based on EPA's last-minute

reconsideration of the Reclassification Action in late July, that alone does not support continuing the abeyance. Nor does judicial economy favor keeping this case in abeyance pending a reconsideration action that, under the Act's plain language, cannot result in any other outcome.

As explained above, EPA's ministerial role in implementing the Clean Air Act's mandatory reclassification provision is limited to consideration solely of the Wisconsin-certified air quality data and resulting design values. *Supra* ARGUMENT § I. So air quality data alone decides the outcome of this case, and EPA's decision to grant reconsideration cannot change that outcome. As a result, there is nothing of substance to reconsider, and no reconsideration proceeding can change what happens the Clean Air Act commands here: the Nonattainment Areas failed to meet the 2015 Ozone Standard, thus compelling mandatory reclassification to Serious nonattainment. *Supra* ARGUMENT § I.

CONCLUSION

For the foregoing reasons, the Public Interest Organizations respectfully request that this Court grant this Motion, dissolve the judicial stay of the Reclassification Action, and summarily affirm the Action by summarily dismissing the petition for review.

Dated: August 27, 2026

/s/ Jeffrey Hammons
Jeffrey Hammons
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
(771) 241-6481
jhammons@catf.us

*Counsel for Respondent-Intervenor
Applicant Clean Wisconsin*

/s/ Priyam Desai
Priyam Desai
Sierra Club
2101 Webster St., Ste. 1300
Oakland, CA 94612
(415) 294-0910
priyam.desai@sierraclub.org

*Counsel for Respondent-Intervenor
Applicant Sierra Club*

CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the type-volume limitation of Federal Rules of Appellate Procedure 27(d)(1)-(2) because, excluding the parts exempted under Federal Rules of Appellate Procedure 27(d)(2) and 32(f), it contains 5139 words. Per Federal Rule of Appellate Procedure 27(d)(1)(E), I certify that this motion complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because this motion has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point New York Times font. I further certify that this motion has been scanned for viruses and is virus-free.

Dated: August 27, 2026

/s/ Jeffrey Hammons
Jeffrey Hammons
Clean Air Task Force
114 State Street, 6th Floor
Boston, MA 02109
(771) 241-6481
jhammons@catf.us

CERTIFICATE OF SERVICE

I certify that on August 27, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

/s/ Jeffrey Hammons

Jeffrey Hammons

Clean Air Task Force

114 State Street, 6th Floor

Boston, MA 02109

(771) 241-6481

jhammons@catf.us

DECLARATION OF CIARAN GALLGHER

I, Ciaran Gallagher, declare:

1. I have personal knowledge of the matters set forth herein and, if called to testify, I could and would testify to the truth of these facts. I am over the age of eighteen and suffer from no legal incapacity. Statements in this declaration expressing an opinion reflect my opinion and judgment on the matter.

2. I submit this declaration in support of Clean Wisconsin's motion to seek intervention in Seventh Circuit Court of Appeals, Case No. 25-1239, to defend the federal action titled "Findings of Failure To Attain and Reclassification of Areas in Illinois, Indiana, Michigan, Ohio, and Wisconsin as Serious for the 2015 Ozone National Ambient Air Quality Standards," published at 89 Fed. Reg. 101901 (Dec. 17, 2024).

3. I am the Energy & Air Manager at Clean Wisconsin. I have worked at Clean Wisconsin for nearly 5 years. In my role, I conduct research to support Clean Wisconsin's advocacy to reduce air pollution in Wisconsin, especially at the intersection of energy system changes and air emissions. I have extensive experience analyzing air pollution issues in Wisconsin, including the public health costs incurred from air pollution. My role also includes advocacy on diverse energy topics at the Midwest grid operator's stakeholder engagement process and in dockets at the Public Service Commission of Wisconsin.

4. Since the 1970s, Clean Wisconsin has used legal expertise and advocacy to protect our environment and the people who depend on it in Wisconsin. That work includes ensuring that environmental laws are properly interpreted, effectively enforced, and continuously strengthened. Clean Wisconsin fights for Wisconsinites' right to a safe and healthy environment.

5. Clean Wisconsin's work also includes research, advocacy, and raising awareness on ozone pollution issues in Wisconsin. For example, Clean Wisconsin recently published a new research brief titled "How do ozone levels impact public health in Wisconsin?," authored by Clean Wisconsin Staff Scientist Paul Mathewson, Ph.D.¹ The organization has a long history advocating on these issues in court, too. A few years ago, Clean Wisconsin successfully challenged EPA's ozone designations in Wisconsin as inadequate, which resulted in the D.C. Circuit vacating parts of EPA's action and requiring stronger protections for Wisconsinites in 2020 (D.C. Circuit case number 18-1203).

6. I received a Ph.D. in Environment & Resources from the University of Wisconsin–Madison's Nelson Institute for Environmental Studies with a concentration in Energy Analysis and Policy and a B.A. in environmental chemistry from Wellesley College.

7. While earning my Ph.D, I conducted academic air quality research and analysis for the entirety of my graduate studies, which culminated in my dissertation titled "Applying and improving air quality models for environmental justice- and policy-oriented research." As part of my research in Dr. Tracey Holloway's research group, I co-authored a review article that summarized the studies to date and methodologies used in interdisciplinary analyses that had quantified the air quality and public health impacts from changes in the energy system due to renewable energy deployment, electric vehicle adoption, and climate policies. After identifying a gap in the research on the environmental justice analysis of these integrated decarbonization co-benefits analyses, I then used two different reduced-form air quality models (InMAP² and

¹ Sam Roherty & Paul Mathewson, Ph.D., "How do ozone levels impact public health in Wisconsin?" (July 2026), https://www.cleanwisconsin.org/wp-content/uploads/2026/08/Ozone_brief_FINAL.pdf

² InMAP (Intervention Model for Air Pollution) is an air quality model used by researchers that estimates how emissions changes affect particulate matter pollution and resulting public health

COBRA³) to quantify the air pollution exposure reduction benefit and/or exposure disparities by race and ethnicity from different emissions sources. I also used these models to quantify the health impacts (benefits or harms) due to changes in air pollution exposures, ranging from missed work days and emergency room visits to premature mortality. These models used EPA's National Emissions Inventory (NEI) as inputs. I used data from regulatory ground-based monitors, including EPA's Air Quality System AQS measurements and satellite observations, including Washington University's Washington University North American Regional Estimates, to evaluate model performances. In the case of InMAP, I used monitor measurements and satellite-derived speciated fine particulate matter (PM_{2.5}) to scale model output.⁴

8. At Clean Wisconsin, I have authored and submitted comments to U.S. EPA on proposed regulations that impact Wisconsinites, seeking to contextualize the Wisconsin-specific health harms, or benefits, caused by changes in air quality that will result because of EPA's proposals. These comments have ranged from power plant greenhouse gas standards, the particulate matter national ambient air quality standards (NAAQS) update, and vehicle emissions standards. My comments include air quality and health impact analyses, using EPA tools and models or applying concentration-response function depending on the proposal in question.

9. I have also authored comments to Wisconsin Department of Natural Resources (DNR) on proposed air permits. I used COBRA analyses and regulatory data and air quality

impacts. Since InMAP has a variable spatial resolution dependent on population, it is especially appropriate for, and used for, intra-urban and environmental justice analyses.

³ COBRA (Co-Benefits Risk Assessment) is an EPA tool for estimating how emissions changes affect air quality, health impacts, and the economic value of those impacts, including changes in ozone pollution.

⁴ My model evaluation found that InMAP underestimates particulate sulfate and overestimates particulate ammonium formation, errors that limit the model's relevance to city-scale decision-making. By correcting model output with scaling factors, the model improves model performance metrics.

monitoring data to demonstrate the health impacts of these point sources and the prevalence of ozone pollution in eastern Wisconsin. I weighed in on how these air permits could impact attaining ozone NAAQS standards, especially when these air permits are for point sources in or near nonattainment areas.

10. Since 2023, I have been a member of Wisconsin DNR's Air Management Advisory Group (AMAG), a stakeholder group that includes local government units, industry representatives, environmental organizations, law firms, and universities.

11. As a result of my academic and professional experience, I am familiar with the Clean Air Act's 2015 ozone NAAQS, Wisconsin's nonattainment areas, federal and state air quality and emissions data, ozone chemistry formation, and public health impacts.

12. Ozone (O₃)—commonly referred to as “smog”—is formed from a chemical reaction between nitrogen oxides (NO_x) and volatile organic compounds (VOCs) in the presence of sunlight and heat. Sources of ozone precursors include vehicle exhaust, electricity generation, a range of industrial and commercial processes, and vegetation.

13. Ground-level ozone is linked to asthma attacks, reduced lung function, chronic obstructive pulmonary disease exacerbations, cardiovascular disease, strokes, pregnancy complications, neurotoxicity, and premature death.⁵ Children, older adults, people with respiratory illnesses, and communities of color face disproportionate impacts from ozone pollution.⁶ These health risks are higher for more vulnerable populations, including children and

⁵ National Ambient Air Quality Standards for Ozone, 80 Fed. Reg. 65292, 65307-08 (Oct. 26, 2015); EPA, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants* 2-20 to -24, tbl.2-1 (Feb. 2013) (EPA-HQ-OAR-2008-0699-0405); American Lung Assoc., *State of the Air: 2022 Report* at 24-25 (2022).

⁶ EPA, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants*, at IS-1, EPA/600/R-20/012 (Apr. 2020), <https://cfpub.epa.gov/ncea/isa/recordisplay.cfm?deid=348522>; EPA, *Children's Environmental Health Disparities: Black and African American Children and*

the elderly.⁷ Ozone pollution that exceeds the federal standard poses even greater health risks to respiratory health. However, those health risks exist even at lower ozone levels than the current federal ozone standard. For example, in 2023, EPA's Clean Air Scientific Advisory Committee opined that the current 2015 ozone standard of 70 ppb is likely inadequate, recommending the adoption of a more stringent standard between 55 to 60 ppb.⁸

14. There are persistent ozone pollution problems and nonattainment issues along Wisconsin's eastern lakeshore, an area with a large and diverse population. The entirety of Milwaukee and Ozaukee Counties and portions of Sheboygan, Washington, Waukesha, Racine, and Kenosha Counties are in nonattainment of the 2015 ozone NAAQS standards. As such, approximately one-third of Wisconsin residents live in areas not meeting the 2015 Ozone NAAQS and experience unhealthy levels of ozone.⁹

15. To estimate the health harms of Wisconsin ozone NAAQS nonattainment, I employed the EPA's Benefits Mapping and Analysis Program (BenMAP).¹⁰ BenMAP has been used in past EPA Regulatory Impact Analyses to quantify health impacts and their associated economic cost due to changes in air quality. Specifically, this analysis identifies the health effect occurrences and quantified health cost of ozone Design Values above the NAAQS 70 ppb

Asthma at 3, https://www.epa.gov/sites/production/files/2014-05/documents/hd_aa_asthma.pdf (accessed Mar. 15, 2026).

⁷ Zhang J., Wei Y., Fang Z. 2019. Ozone Pollution: A Major Health Hazard Worldwide. *Front. Immunol.* doi.org/10.3389/fimmu.2019.02518

⁸ CASAC Review of the EPA's Policy Assessment (PA) for the Reconsideration of the Ozone National Ambient Air Quality Standards (External Review Draft Version 2), EPA-CASAC-23-002 (June 9, 2023), https://www.4cleanair.org/wp-content/uploads/CASAC_Review-Ozone_PA_Draft_2-060923.pdf; A copy of this report is attached to these comments (attached as Ex. 22).

⁹ Wisconsin Department of Natural Resources. 2022. DNR Releases 2022 Air Quality Trends Report. October 11, 2024. <https://content.govdelivery.com/accounts/WIDNR/bulletins/3319c1d>

¹⁰ United States Environmental Protection Agency. 2025. Environmental Benefits Mapping and Analysis Program (BenMAP). <https://www.epa.gov/benmap>

standard. My analysis of Wisconsin's ozone nonattainment health impact used reported 2023-2025 8-Hour Ozone Design Values in the six counties designated in nonattainment¹¹ and was conducted at the county-level.¹² An ozone design value is the three-year average of a monitor's annual fourth-highest daily maximum 8-hour ozone concentration, which EPA uses to determine compliance with the ozone NAAQS. So the 2023-2025 design value is the average of the annual fourth-highest concentration in the years 2023, 2024, and 2025. Yearly incidences and the quantified health costs are reported for short-term health impacts and mortality, using a 2% discount rate, in the table below.

16. According to my analysis, ozone pollution levels above the federal standard of 70 ppb in the nonattainment areas in Wisconsin is estimated to result *annually* in 2–4 excess deaths, 138 emergency room visits, and 57,600 occurrences of asthma symptoms in Milwaukee, Ozaukee, Sheboygan, Washington, Waukesha, Racine, and Kenosha Counties. This yields \$88,600,000 – \$112,000,000 of health harms every year from not being in attainment of the federal ozone standard. Ozone nonattainment is harming Wisconsin residents year after year.

Health Effect	Occurrences	Quantified Health Cost (\$)
Minor Restricted Activity Days	34,700	2,830,000
Asthma Symptoms	57,600	14,400,000
Emergency room visits	138	141,000

¹¹ If a county had multiple monitors, they were averaged to represent the county's D8HourMax. Although some WI counties are only partially in nonattainment, we applied their nonattainment design values to the entire county to match the BenMAP spatial scale. Wisconsin Department of Natural Resources. 2026. 8-Hour Ozone Design Values: 2023-2025. Available at: <https://dnr.wisconsin.gov/sites/default/files/topic/AirQuality/OzoneDVs2025.pdf>

¹² Table 9 and Table 11, United States Environmental Protection Agency. 2024. Estimating PM2.5- and Ozone-Attributable Health Benefits: 2024 Update. <https://www.epa.gov/system/files/documents/2024-06/estimating-pm2.5-and-ozone-attributable-health-benefits-tsd-2024.pdf>

Health Effect	Occurrences	Quantified Health Cost (\$)
Hospital admissions	12	499,000
School Loss Days	29,300	45,500,000
Mortality – low estimate	2	25,200,000
Mortality – high estimate	4	48,900,000
Total – low estimate	-	88,600,000
Total – high estimate	-	112,000,000

17. Wisconsin sources contribute to the state's ozone pollution. According to EPA's National Emission Inventory data (NEI),¹³ statewide emissions of NO_x and VOC have declined since 2002. But in more recent years, emissions of these ozone precursors have remained mostly flat (NO_x) or even increased (VOC)¹⁴ as seen below in Figures 1 and 2.

¹³ U.S. Environmental Protection Agency. Air Emissions Data: State Tier 1 CAPS Trends 1990-2024. <https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data>

¹⁴ EPA's inventory methodology changed in 2020, resulting in a noticeable bump in reported emissions. After that one time methodology change, statewide emissions of VOCs have increased.

Figure 1: Wisconsin Nitrogen Oxides (NO_x) emissions
National Emissions Inventory data 2015 through 2024

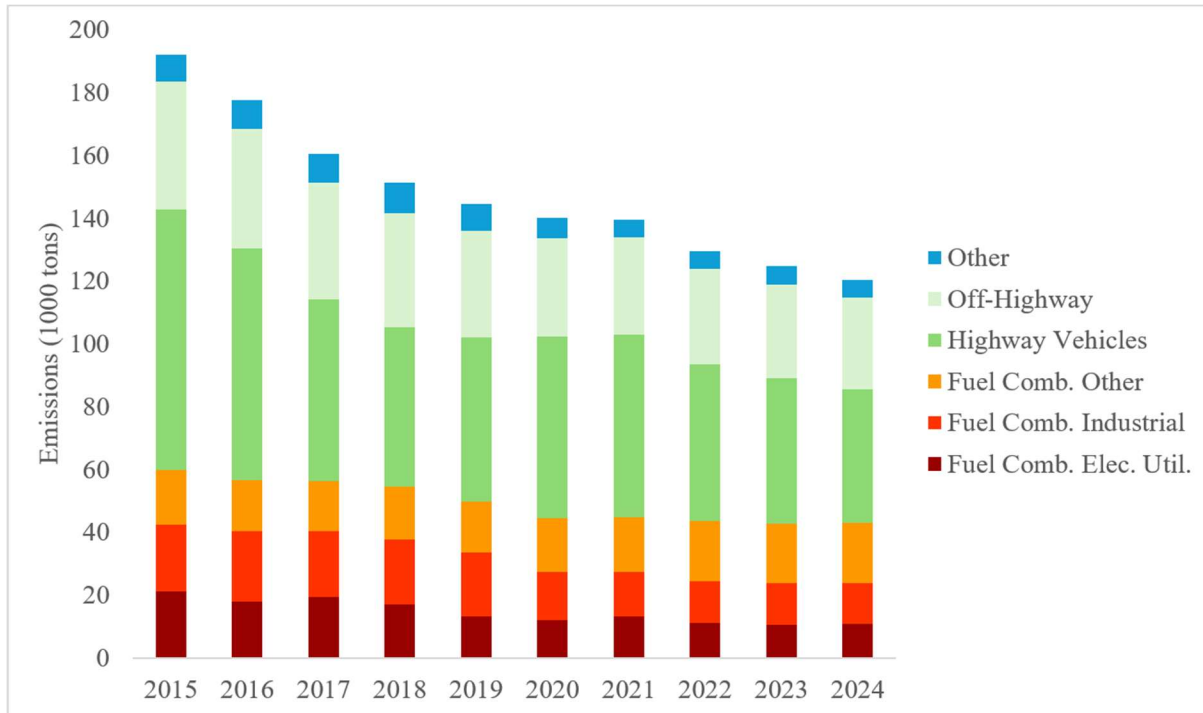
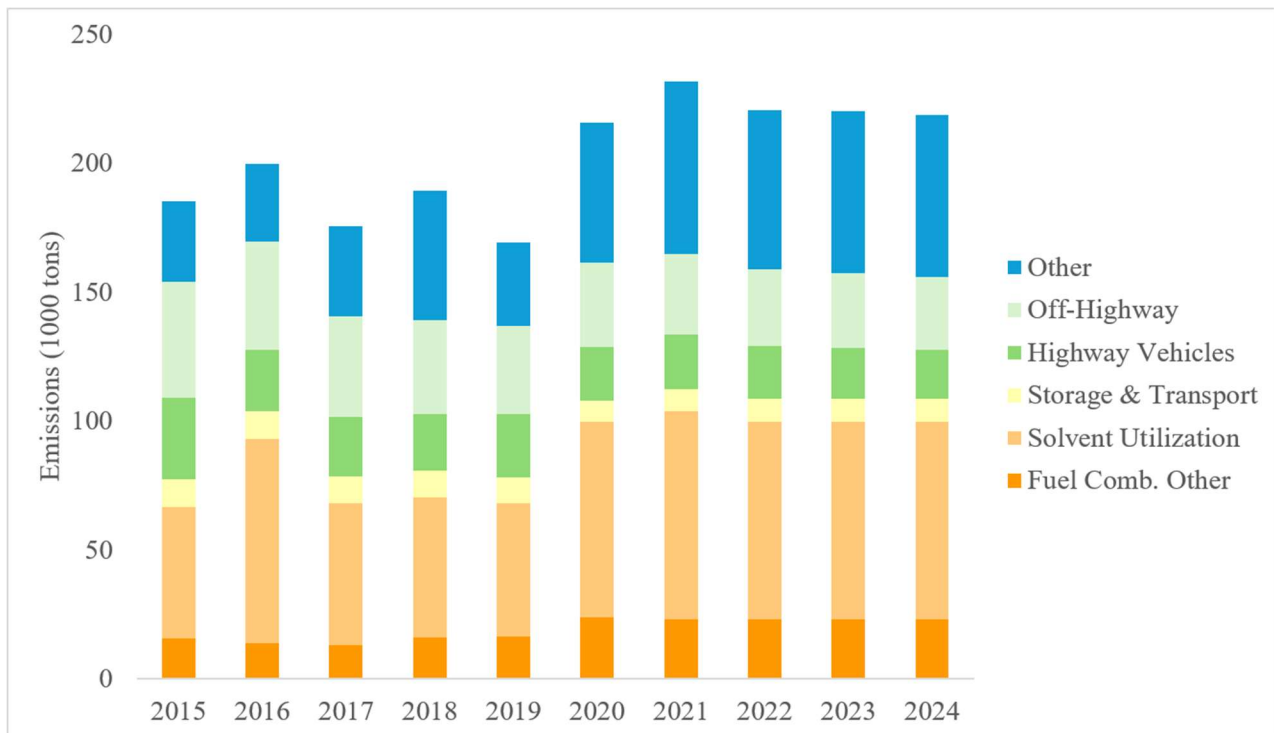


Figure 2: Wisconsin Volatile Organic Carbon (VOC) emissions
National Emissions Inventory data 2015 through 2024

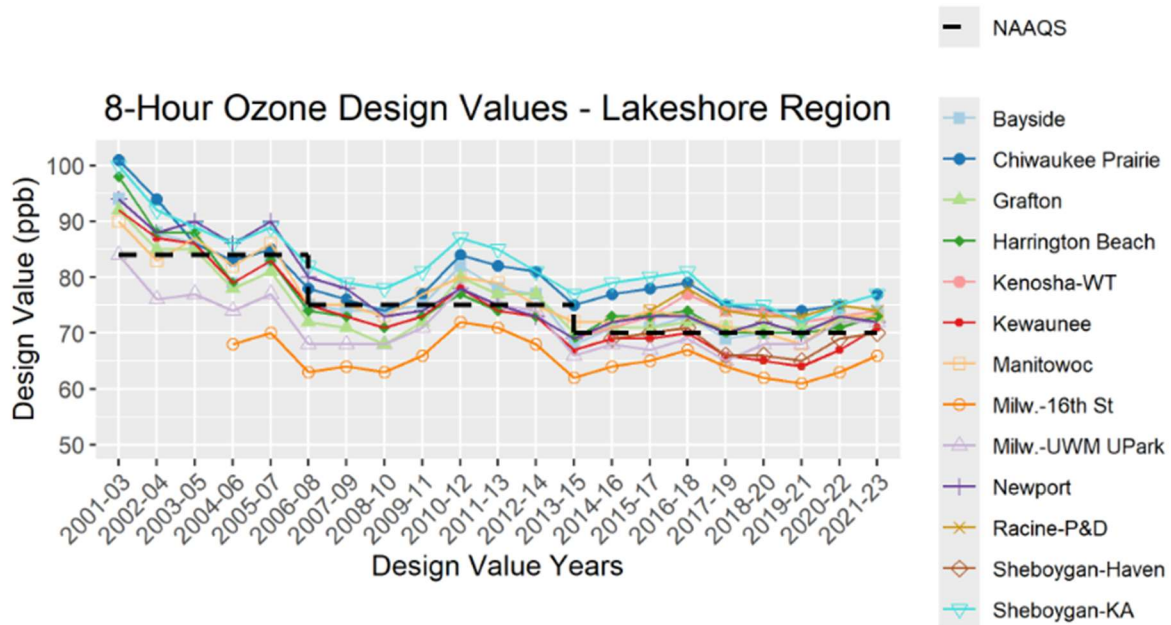


18. Wisconsin's ozone Design Values have seen similar trends to precursor emissions – initial declines followed by a leveling of values, as seen in Figure 3. This figure from the DNR's 2024 Wisconsin Air Quality Trends Report shows the trends in the monitors designed by the DNR as in the lakeshore region of Wisconsin.¹⁵ For a period of time, from 2001 to 2010, ozone levels along Wisconsin's eastern lakeshore consistently declined. Since then, Design Values have fluctuated but mostly remained relatively flat and, importantly, many have not met the NAAQS standard of 70 ppb.¹⁶ As such, ozone regulatory nonattainment classifications in Wisconsin have increased in severity as the nonattainment areas continue to not meet the standard.

¹⁵ Wisconsin Department of Natural Resources. 2024. 2024 Wisconsin Air Quality Trends Report: Data from 2001-2023. Publication Number AM-643, December 2024.

¹⁶ Lake Michigan Air Directors Consortium (LADCO). 2023. Conceptual Models of Ozone Formation in the Great Lakes Region: Technical Report. Figure 4.24, page 121. Available at: <https://www.ladco.org/wp-content/uploads/Projects/Ozone/Ozone-conceptual-model-report-FINAL-Feb-2023.pdf>

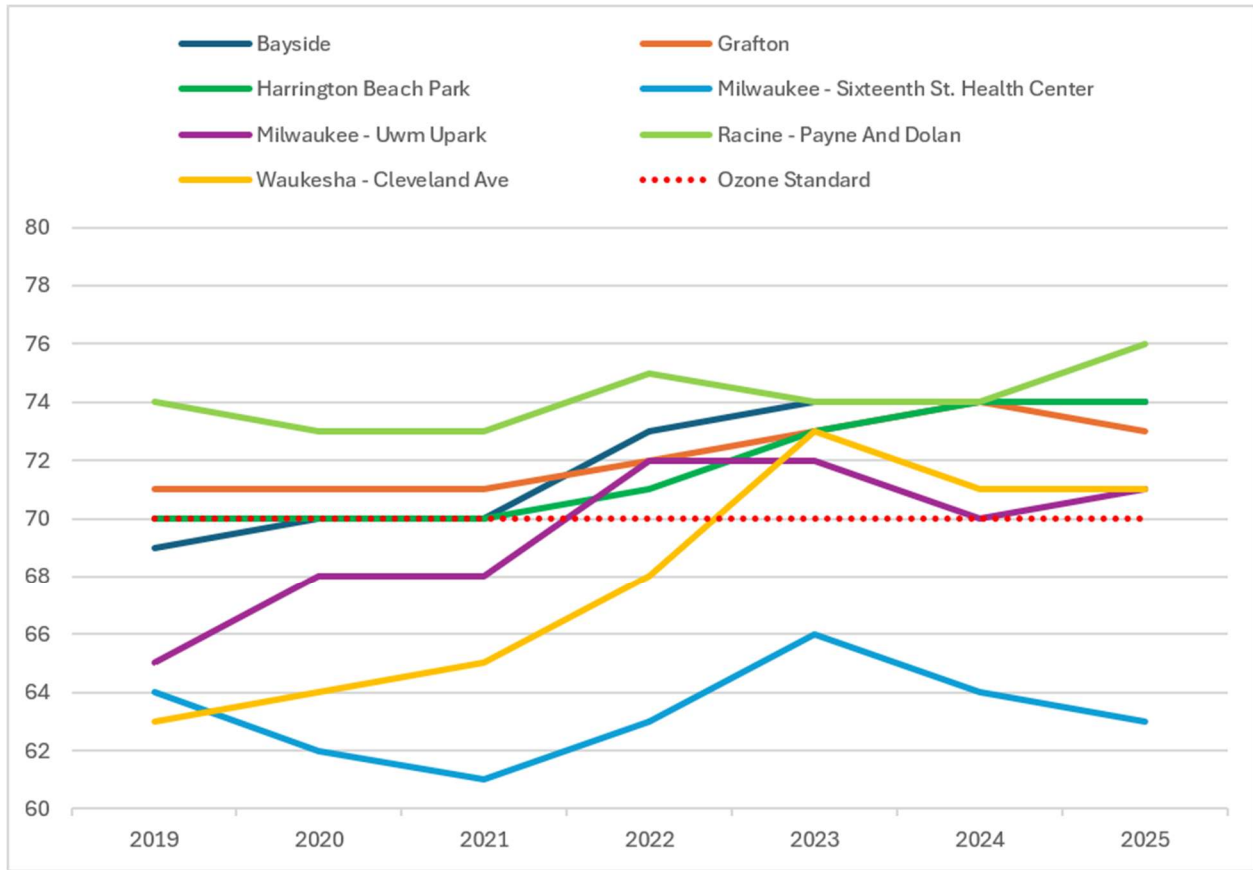
Figure 3: Ozone Design Values from monitors on Wisconsin's lakeshore
2001-2003 design value through 2021-2023 design value



19. Looking at more recent design values, the ozone trends show no improvement, and in some places, are actually worse now than they were a few years ago. Starting with the Milwaukee nonattainment area, using data from EPA's Ozone Watch tool,¹⁷ which includes data certified by Wisconsin as accurate through 2025, ozone levels are worse compared to a few years ago. This is seen below in Figure 4 as trends in 8-hour ozone design values for monitors in the Milwaukee nonattainment area have trended upwards and above the ozone standard, except for the Milwaukee 16th Street Heath Center monitor.

¹⁷ EPA, Ozone Watch, <https://www.epa.gov/outdoor-air-quality-data/ozone-watch>

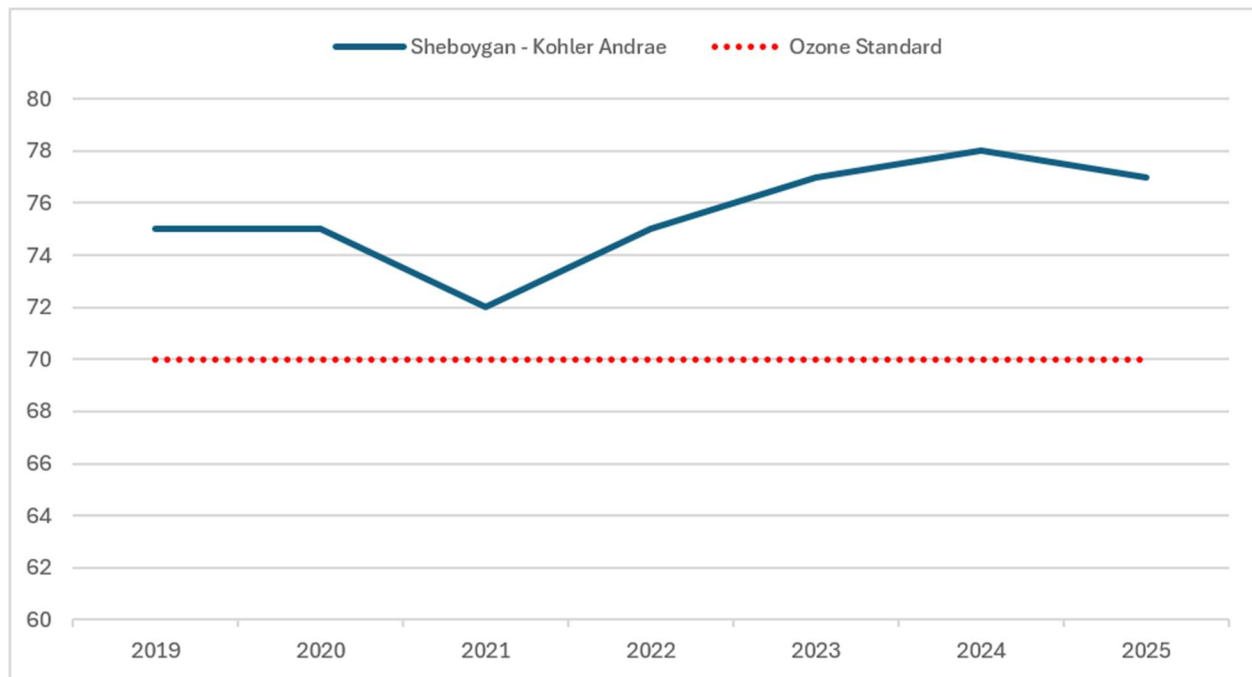
Figure 4: Milwaukee Nonattainment Trends
2017-2019 design value through 2023-2025 design value



Milwaukee Design Values							
Monitor	2017-2019	2018-2020	2019-2021	2020-2022	2021-2023	2022-2024	2023-2025
Bayside	69	70	70	73	74	74	74
Grafton	71	71	71	72	73	74	73
Harrington Beach Park	70	70	70	71	73	74	74
Milwaukee - Sixteenth St. Health Center	64	62	61	63	66	64	63
Milwaukee - Uwm Upark	65	68	68	72	72	70	71
Racine - Payne And Dolan	74	73	73	75	74	74	76
Waukesha - Cleveland Ave	63	64	65	68	73	71	71

20. Turning next to the Sheboygan nonattainment area, Figure 5 shows the design value trends at the sole Sheboygan monitor over the last few years. Similarly, design values for this monitor have remained above the standard and have trended upwards, especially since 2021 (the 2019-2021 design value).

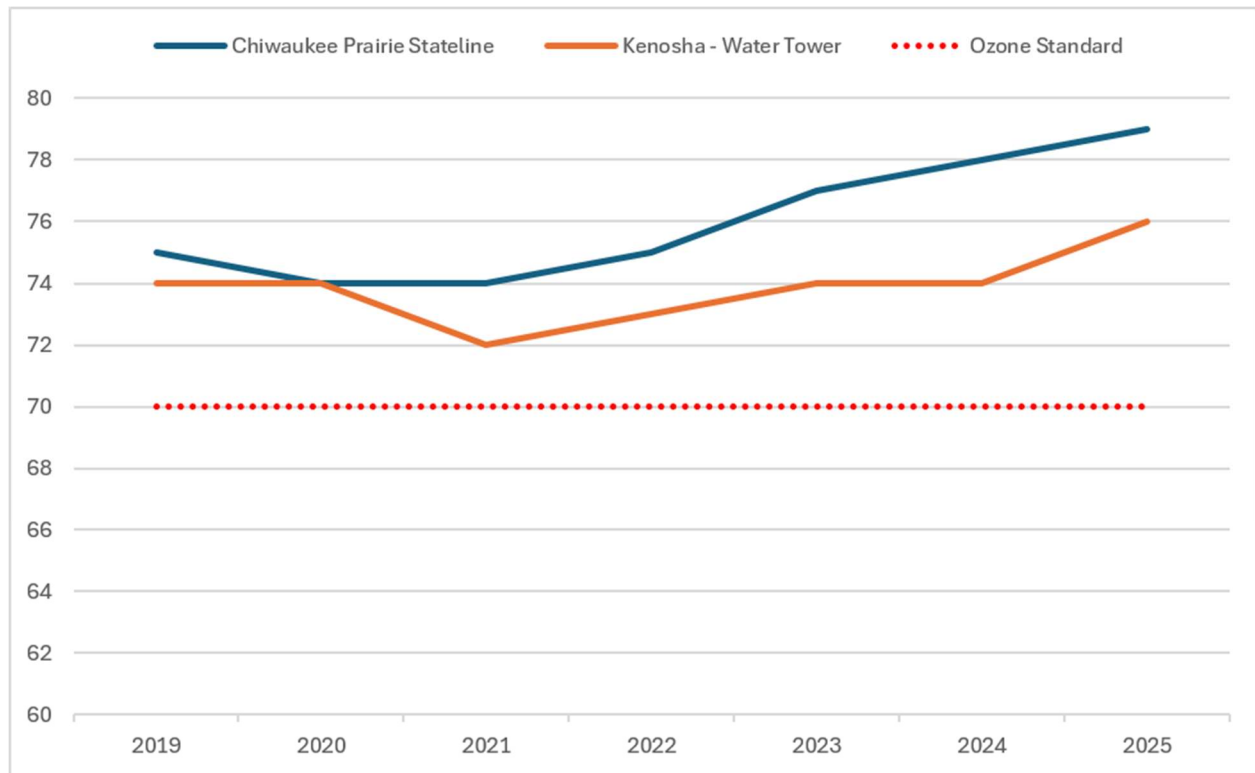
Figure 5: Sheboygan Nonattainment Trends
2017-2019 design value through 2023-2025 design value



Sheboygan Design Values							
Monitor	2017-2019	2018-2020	2019-2021	2020-2022	2021-2023	2022-2024	2023-2025
Sheboygan - Kohler Andrae	75	75	72	75	77	78	77

21. Lastly, Figure 6 below shows the design value trends for the monitors located in Kenosha County, which is part of the larger Chicago IL-IN-WI nonattainment area. Again, 2021 (the 2019-2021 design value) was an inflection point where design values have only increased since then.

Figure 6: Kenosha Nonattainment Trends
2017-2019 design value through 2023-2025 design value



Kenosha Design Values							
Monitor	2017-2019	2018-2020	2019-2021	2020-2022	2021-2023	2022-2024	2023-2025
Chiwaukee Prairie Stateline	75	74	74	75	77	78	79
Kenosha - Water Tower	74	74	72	73	74	74	76

22. Climate change is worsening Wisconsin's ozone problems, too, by lengthening periods of hot, sunny weather that promote ozone formation. Accordingly, ambient ozone pollution levels exceeding the ozone NAAQS in Wisconsin have occurred earlier and later compared to past ozone seasons, due to trending meteorological pattern of more sunny and hot days in spring and fall.

23. Without emissions decreases through more stringent air permits requirements and federal emissions regulations, such as those that come with reclassification to Serious, days of

ozone pollution above the ozone NAAQS standard in Wisconsin will continue. With more days of pollution above the standard, more public health impacts are expected to affect Wisconsinites through asthma exacerbations, ER visits, lost work days, and more.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 26, 2026.

A handwritten signature in black ink, appearing to read 'CLG', followed by a horizontal line extending to the right.

Ciaran L. Gallagher

DECLARATION OF RYAN KELLY

I, Ryan Kelly, declare as follows:

1. My name is Ryan Kelly, and this declaration is based on my personal and professional knowledge, information, and belief. I am over the age of eighteen years and suffer from no legal incapacity.

2. I submit this declaration in support of Clean Wisconsin's motion to seek intervention in Seventh Circuit Court of Appeals, Case No. 25-1239, to defend the federal action titled "Findings of Failure To Attain and Reclassification of Areas in Illinois, Indiana, Michigan, Ohio, and Wisconsin as Serious for the 2015 Ozone National Ambient Air Quality Standards," published at 89 Fed. Reg. 29137 (Dec. 17, 2024).

3. I am the Development Director at Clean Wisconsin, a public interest membership organization organized and existing since 1970 under the laws of the State of Wisconsin and recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.

4. My work at Clean Wisconsin includes responsibility for major gifts, outreach and member engagement, including ensuring that members engage with Clean Wisconsin's mission in a manner they value. Specifically, my duties at Clean Wisconsin require me to communicate with Clean Wisconsin's

membership, by, among other things, preparing materials for distribution to members and to prospective members concerning Clean Wisconsin's mission and history as well as discussing environmental issues of concern to Wisconsinites. Those issues include clean air and public health and environmental impacts in Wisconsin.

5. When an individual becomes a member of Clean Wisconsin, their name and address is entered into our membership database, which is updated each time a member renews their membership or donates to Clean Wisconsin. I am responsible for tracking that information.

6. My work at Clean Wisconsin therefore requires me to be familiar with the organization's mission, which is to be a voice for Wisconsin's environment, working to preserve and protect Wisconsin's clean air, clean water, and natural heritage, including by engaging on a wide range of issues and in a number of venues, including state and federal courts, on matters that support and protect our natural resources and the health of all Wisconsinites.

7. Litigation and advocacy seeking cleaner air in Wisconsin, including through the abatement of high levels of ozone pollution that adversely affect our members and all Wisconsinites and that cause environmental harms in Wisconsin, falls squarely within Clean Wisconsin's mission.

8. Through my work at Clean Wisconsin, I understand that the United

States Environmental Protection Agency (“U.S. EPA”) sets minimum standards, known as the National Ambient Air Quality Standards for ozone (“ozone NAAQS”), for exposure to ozone air pollution, and periodically updates those standards. I understand that the ozone NAAQS was updated in 2015, that there are areas in Wisconsin that have not met the 2015 standard, and that until a standard is met, requirements intended to achieve the standard remain in effect in those areas.

9. Through my work at Clean Wisconsin, I understand that ozone pollution is a problem—exemplified by the failure to meet or difficulty maintaining attainment of the 2015 ozone NAAQS—for many who live in the southeastern counties in the state, particularly in the counties along Lake Michigan. I understand that because these areas failed to attain the 2015 standard by the August 3, 2024, Moderate attainment deadline, they were reclassified by EPA to the Serious classification. The State of Wisconsin challenged that reclassification action in the instant matter.

10. Through my work at Clean Wisconsin, I understand that on July 16, 2026, the State of Wisconsin—two weeks before its brief was due in this case—submitted to EPA a request to reconsider the reclassification action. And that, on July 28, 2026, EPA granted that request, just days before the state was required to submit its brief to this Court. I understand that the state and EPA moved for

abeyance of this case, and therefore the stay of the reclassification action is still in effect indefinitely. I understand that ozone pollution can damage respiratory health and is particularly harmful to children, the elderly, and those with chronic respiratory conditions.

11. Through my work at Clean Wisconsin, I can say that the organization has 26 members living in Kenosha County, 76 members living in Racine County, 415 members living in Milwaukee County, 193 members living in Waukesha County, 36 members living in Washington County, 65 members living in Ozaukee County, and 39 members living in Sheboygan County. Of Clean Wisconsin's members in these counties, many of them live, work, and/or recreate in the parts of those counties in nonattainment of the 2015 ozone NAAQS.

12. Through my work at Clean Wisconsin, I can state that Rebecca Clarke is a member of Clean Wisconsin and first became a member in 2021.

13. Through my work at Clean Wisconsin, I can state that Paige Radke is a member of Clean Wisconsin and first became a member in 2017.

14. Through my work at Clean Wisconsin, I can state that Pam Ritger is a member of Clean Wisconsin and first became a member in 2014.

I declare under the penalty of perjury that the foregoing is true and correct.

Dated: August 26, 2026.

A handwritten signature in black ink, appearing to read "Ryan Kelly". The signature is written in a cursive, flowing style. The first part, "Ryan", is more compact and stylized, while "Kelly" is written with more distinct, connected letters.

Ryan Kelly

Declaration of Rebecca Clarke

I, Rebecca Clarke, state and declare as follows:

1. This declaration is based on my personal knowledge, experience, information, and belief. I am over the age of eighteen and suffer from no legal incapacity. Statements in this declaration expressing an opinion reflect my personal opinion and judgment on the matter.

2. I submit this declaration in support of Clean Wisconsin's motion to seek intervention in Seventh Circuit Court of Appeals, Case No. 25-1239, to defend the federal action titled "Findings of Failure To Attain and Reclassification of Areas in Illinois, Indiana, Michigan, Ohio, and Wisconsin as Serious for the 2015 Ozone National Ambient Air Quality Standards," published at 89 Fed. Reg. 101901 (Dec. 17, 2024).

3. I'm a resident of Sheboygan, Wisconsin, where I have lived since 2004.

4. I am a member of Clean Wisconsin and have been a member for a few years.

5. I have spent much of my professional life as a park naturalist and environmental educator. I have my bachelor's and master's degrees in Natural Resource Management from University of Wisconsin-Stevens Point. As a park naturalist, I developed and led outdoor programs for children and families and

worked to connect people with Wisconsin's beautiful environment and natural resources. Earlier in my career I did environmental education further north, including the Wisconsin Dells region, then the last 10 years as a naturalist I worked in Sheboygan.

6. My role as a park naturalist required me to spend substantial time outdoors and to help others learn about our environment and enjoy outdoor recreation. Through my work, I developed an appreciation for the importance of clean air and healthy outdoor environments.

7. My awareness of ozone pollution began through my work as an environmental educator for children. Years ago when I first started out as a park naturalist, I noticed some of the kids under my supervision had breathing issues. So I signed up to receive air quality alerts because poor air quality could affect outdoor activities.

8. While working as a naturalist, I regularly encountered children who required inhalers and other respiratory equipment. I observed these respiratory struggles throughout my career, but the issue became even more apparent after I began working with children in Sheboygan. In my experience, many children experienced breathing difficulties that made outdoor activities more difficult and required them to carry inhalers or other respiratory devices.

9. Those experiences motivated me to learn more about the air quality problems in Sheboygan. Through my research and community involvement, I learned that Sheboygan County had long struggled to attain federal ozone standards and had been designated a nonattainment area for ozone.

10. Since approximately 2008, I have actively advocated for stronger efforts to address ozone pollution in Sheboygan County. I am a co-founder of the Sheboygan Ozone Reduction Alliance, a citizen-led organization dedicated to educating the public about ozone pollution and advocating for cleaner air along Wisconsin's Lake Michigan shoreline. I have attended public meetings, reviewed planning documents, followed state and federal regulatory actions, and spoken publicly about the need to reduce ozone pollution. I have also worked to educate my neighbors and decisionmakers about the effects of ozone pollution on public health and quality of life.

11. I became a member of Clean Wisconsin because of its work advocating for clean air and public health, including its efforts to ensure that state and federal agencies comply with the Clean Air Act. I value Clean Wisconsin's willingness to pursue litigation when necessary to ensure that environmental laws are properly enforced.

12. My support for Clean Wisconsin is informed by my own advocacy experience. I opposed EPA's prior decision to split the Sheboygan ozone

nonattainment area because I believed it would undermine efforts to reduce local air pollution. I followed Clean Wisconsin's successful legal challenge, which resulted in a court requiring EPA to reconsider that decision. That experience reinforced my belief in Clean Wisconsin's important role advocating for cleaner air and protecting communities like mine.

13. Through my advocacy and research, I have developed an understanding of the Clean Air Act's ozone nonattainment program. I understand that nonattainment areas fail to meet federal ozone standards and must take additional steps to reduce pollution and improve air quality. I also understand that higher nonattainment classifications trigger stricter permitting requirements, including emissions offsets for major pollution sources, to help ensure progress toward cleaner air and attainment of ozone standards.

14. I have been following EPA's decision to reclassify Wisconsin's ozone nonattainment areas from Moderate to Serious for ozone. I understand that a Serious classification brings additional planning requirements and ozone pollution reductions. Based on my years of following ozone issues in Wisconsin, I believe those additional Serious requirements are necessary because ozone pollution remains a significant and longstanding problem in Sheboygan County and other parts of Wisconsin.

15. I like to spend time outdoors in Sheboygan and throughout southeastern Wisconsin. I regularly walk my dogs outdoors, garden, participate in community events, enjoy Lake Michigan's beaches, boat on Lake Michigan, and travel throughout the region, including frequent trips to Milwaukee to see the Brewers play baseball.

16. Ozone pollution directly affects my ability to enjoy these activities. On days when ozone levels are high, I experience a heaviness in my chest, breathing difficulties, and an unusually fast heartbeat. Physical activities that are normally easy become significantly more difficult.

17. During higher-ozone periods, I often need to reduce my outdoor activity, spend additional time resting, or go indoors altogether. Activities such as walking my dog, gardening, pulling weeds, and other outdoor activities become more challenging and even harmful to my health because of the effects ozone has on my breathing. I sometimes feel as though I am breathing through a sponge and have had to stop doing activities and go inside to rest and recover.

18. I love living near Lake Michigan and spending time on the water with my family. We chose to live in Sheboygan so that we can be near the lake. But when ozone levels are high, there are days when I have to cancel plans, stay off the lake, or head home early because the air quality makes it harder for me to be outside.

19. My concern extends beyond my own health. My husband has asthma, and I worry about the effects ozone pollution can have on him and others with respiratory conditions. I also worry about my pets, older adults and other individuals in my community who may be vulnerable to poor air quality.

20. I am especially concerned about children because, based on my experience working with kids, I know they are particularly vulnerable to the effects of ozone pollution while their little lungs are still developing.

21. Ozone pollution also affects how I interact with my community. As a naturalist and environmental educator, I want people to spend time outdoors and enjoy nature. Instead, on high-ozone days, I often find myself warning friends and family to stay inside on bad ozone days, which is deeply frustrating.

22. I am also concerned that the benefits of the Serious reclassification have already been delayed for too long. After nearly two decades of following ozone issues in Sheboygan, I know that cleaner air does not happen overnight. Planning for the emission reductions needed to improve air quality takes time, and every delay pushes meaningful relief for residents like me further into the future.

23. I understand that the next attainment deadline is August 2027. Given how long I have lived with the effects of ozone pollution, I believe the Serious reclassification should proceed as soon as possible so that Wisconsin can begin

implementing the measures needed to improve air quality and deliver health benefits for me and my community.

24. I believe the Serious reclassification is necessary because the area's longstanding failure to attain the ozone standard demonstrates that existing efforts have been insufficient. I think additional requirements associated with the Serious classification are needed to achieve meaningful air-quality improvements. More can and should be done to reduce emissions in and around the Wisconsin nonattainment areas, like meaningful improvements at industrial facilities and smart infrastructure and transportation planning. I also know that interstate ozone pollution is an issue and hope that the Serious classification means EPA will actually take its enforcement role seriously under the Clean Air Act's Good Neighbor provisions and help address ozone transported into Wisconsin.

25. If the reclassification to Serious takes effect, it will result in ozone pollution reductions. That means cleaner air for myself, my family, and other Sheboygan residents. Lower ozone levels would reduce the symptoms I experience, improve my ability to spend time outdoors, and enhance my enjoyment of Lake Michigan and other outdoor recreational activities. If the reclassification keeps getting delayed, it will prolong unhealthy ozone levels and delay the benefits of cleaner air for me.

26. The reclassification to Serious is necessary to protect my health and the long-term goal of bringing ozone pollution under control in southeastern Wisconsin. I support allowing the reclassification to finally take effect so that state and local officials start taking steps to achieve cleaner air and hopefully attain the ozone standard.

I declare under penalty of perjury that the foregoing is true and correct.

Signed by:



0DA9596231934D2...

Dated: August 26, 2026

Rebecca Clarke

Declaration of Paige Radke

I, Paige Radke, state and declare as follows:

1. This declaration is based on my personal knowledge, experience, information, and belief. I am over the age of eighteen years and suffer from no legal incapacity. Statements in this declaration expressing an opinion reflect my personal opinion and judgment on the matter.
2. I submit this declaration in support of Clean Wisconsin's motion to seek intervention in Seventh Circuit Court of Appeals, Case No. 25-1239, to defend the federal action titled "Findings of Failure To Attain and Reclassification of Areas in Illinois, Indiana, Michigan, Ohio, and Wisconsin as Serious for the 2015 Ozone National Ambient Air Quality Standards," published at 89 Fed. Reg. 101901 (Dec. 17, 2024).
3. I'm a resident of Milwaukee, Wisconsin. I was born in Milwaukee and grew up in Milwaukee and the surrounding areas. I moved to Madison to finish my bachelor's degree at University of Wisconsin–Madison and then moved back to Milwaukee in 2013 to start my master's degree at University of Wisconsin-Milwaukee. I've lived in downtown Milwaukee since 2015.
4. I am a member of Clean Wisconsin and have been a member for a few years. I've attended their yearly fundraiser, Epicurean Evening, since 2018 and onward. I support Clean Wisconsin's mission and became a member because I believe in their work to advocate for clean air and clean water for Wisconsinites.
5. My appreciation for Wisconsin's' beautiful environment and natural resources started at a young age. I would visit my grandparents in Door County and enjoy all that Door County's environment had to offer. I loved hiking the wilderness and going out on Lake Michigan.
6. As an adult, my passion for protecting the environment led me to volunteer for a local land trust dedicated to securing and conserving green spaces in urban Milwaukee and areas surrounding the Milwaukee River. I am also on the environment and ecology committee for the local Rotary Club, where our role is to

update the club on and advocate for environmental and conservation efforts and opportunities.

7. Ozone pollution in Milwaukee affects me personally. I live on the 20th floor of an apartment building downtown, and I can literally see when the smog is bad in the summer. I've noticed it gets particularly bad when it's both hot and humid.

8. I love to be outside, go on walks, and also like to keep my apartment's windows open for fresh air. I walk to work almost daily and also love to go on walks with my husband.

9. But when there's bad ozone levels, I have to change my routines or cease activities I enjoy. For example, when I get bad air quality alerts or I can literally see the smog from my apartment's windows, I have to keep them shut (or shut them if they were open). I like to walk to work but there have been some days when the ozone and other air pollution is bad enough that I decide to work from home instead of going outside.

10. I think Wisconsin should do more to implement programs to reduce air pollution and improve the air quality in Milwaukee and surrounding areas. I worry about what long term exposure to high ozone levels does over time to my health, especially considering I've spent the majority of my life in the Milwaukee area.

11. In addition to the health harms to myself caused by ozone levels, I also worry about how it impacts others in my community. As noted earlier, I volunteer for a land trust that's dedicated to acquiring and conserving lands so that more green space is available and accessible to the public in Milwaukee and surrounding counties. But those green spaces can't always be used by all when the smog levels are high.

12. I am aware that the Milwaukee area is not currently attaining the national ozone standard and that it recently missed its August 2024 deadline to meet the standard, meaning it should start implementing more measures to reduce ozone pollution. I think these measures should take effect sooner rather than later. For both my benefit and for my community in Milwaukee.

13. My passion for land conservation stems from my belief in the positive physical and mental health benefits of spending time in nature. Public green-space, when protected and preserved, restores us as people in return. Clean air has a similar form of reciprocity: when we take care to clean it up, it returns the favor through clearer skies, easier breathing, and healthier, longer lives. I want Milwaukee to be a place where opening a window feels like an invitation, not a risk, and where the air restores the people who call this city home.

I declare under penalty of perjury that the foregoing is true and correct.

Signed by:

Paige Radke

57A1EBFA4CD34D0

Date: 8/26/2026

Paige Radke

DECLARATION OF PAMELA M. RITGER

I, Pamela M. Ritger, declare and state as follows:

1. This declaration is based on my personal knowledge, experience, information, and belief. I am over the age of eighteen and suffer from no legal incapacity. Statements in this declaration expressing an opinion reflect my personal opinion and judgment on the matter.

2. I submit this declaration in support of Clean Wisconsin's motion to seek intervention in Seventh Circuit Court of Appeals, Case No. 25-1239, to defend the federal action titled "Findings of Failure To Attain and Reclassification of Areas in Illinois, Indiana, Michigan, Ohio, and Wisconsin as Serious for the 2015 Ozone National Ambient Air Quality Standards," published at 89 Fed. Reg. 101901 (Dec. 17, 2024).

3. I have been a member of Clean Wisconsin for 13 years.

4. My family, including my husband and four daughters, one aged 10, two 6-year-old twins, and the youngest is 4 months old, live in Milwaukee. We have lived here for almost our entire lives, with my husband and I leaving briefly for college, but returning to the home town we love.

5. My husband and I are concerned about our family's exposure to smog in Milwaukee. It is our belief that the reclassification rule will require steps be

taken to reduce the ozone pollution our family experiences, which I strongly support.

6. All of my daughters love playing outside in the yard and around the neighborhood with the many kids that live on our block, and we try to have them play outside every day, to get some energy out. However, we will keep them inside on days when there are poor air quality alerts on high ozone pollution days, which seem to be increasing in frequency in recent years.

7. We also enjoy biking, hiking and playing soccer. We must be cautious and plan accordingly for bike and hiking trips in the middle of summer, to be sure we are prepared for high pollution days. When the smog is particularly bad, we avoid hiking and biking, and it feels like we have to do so more often than we used to.

8. My daughters also love playing outside at their school, which I love for them to do, though I am concerned about the ozone pollution they are exposed to as their school is located right next to the I-43/I-94 Interstate Highway.

9. I have been diagnosed with seasonal allergies, as well as allergies to dust, pet dander, and mold. My husband has not been diagnosed but seems to experience allergies from time to time. The smog also aggravates my allergies, making them feel even worse.

10. I am concerned about the long-term impacts of ozone pollution on my and my family's health, including potentially more respiratory diseases, heart

disease, and other health issues. I am particularly worried about what the smog does to my daughters, whose little lungs are still developing.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: August 27, 2026

A handwritten signature in black ink, appearing to read "Pamela M. Ritger". The signature is written in a cursive style with a horizontal line extending from the end of the name.

Pamela Ritger

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

STATE OF WISCONSIN,	)	
	)	
Petitioner,	)	
) v.)	)	
	)	
UNITED STATES	)	
ENVIRONMENTAL PROTECTION	)	Case No. 25-1239
AGENCY and LEE ZELDIN,	)	
Administrator,	)	
	)	
Respondents.	)	
	)	

DECLARATION OF ELIZABETH WARD

I, Elizabeth Ward, do declare as follows:

1. My name is Elizabeth Ward. I am over 18 years of age.
2. I am the Director of the Sierra Club Wisconsin Chapter. I have held this position since 2019. Prior to that, I held the role of Conservation Program Coordinator. I have been working or volunteering with the Sierra Club in some capacity since 2010.
3. As the Wisconsin Chapter Director, I am responsible for overseeing

Sierra Club's on-the-ground efforts to meet objectives as informed by the Wisconsin Chapter Executive Committee and in collaboration with its national campaign counterparts, such as the Beyond Coal Campaign.

4. Because of my position and responsibilities, and through my regular interaction with members, I am familiar with the Sierra Club's purpose, organization, and activities, and with the environmental interests and concerns of Sierra Club's Wisconsin-based members. I routinely interact with the Sierra Club's members in Wisconsin, as well as other state and national staff.

5. The Sierra Club's mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's ecosystems and resources; to educate and enlist humanity in the protection and restoration of the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club members across the country are greatly concerned about air quality, and the Club has a long history of involvement in air quality-related advocacy on both the local and national levels.

6. Part of my work in Wisconsin includes seeking opportunities to reduce greenhouse gas and other air pollution emissions from electricity generation throughout the state. I am responsible for developing advocacy strategies to limit emissions and the environmental impact of fossil fuel power plants, co-planning and supporting the work of organizers and campaigners to carry out these

strategies, and managing and supporting 4 employees and more than 100 Sierra Club leaders either directly or indirectly, and advocate for stricter pollution controls and stronger enforcement at power plants through regulation, litigation, and collective action across the state.

7. As a result of this and other work, I am familiar with health, environmental, and environmental justice issues in Wisconsin and the region.

8. Through my current role, I am also familiar with Sierra Club's past and ongoing efforts to strengthen the ozone National Ambient Air Quality Standards ("NAAQS") and ensure its timely enforcement through the adoption of legally adequate state or federal implementation plans. The following information is within my personal knowledge.

9. Sierra Club has expended its resources addressing air pollution issues, including issues relating to ozone and the enforcement of the 2015 ozone National Ambient Air Quality Standard. For example, Sierra Club has sought to inform the public about the health impacts of ozone pollution. We regularly advocate for strong implementation of the ozone NAAQS. We also use information that is produced through monitoring and reporting of air pollution to inform ourselves and our members about pollution.

10. I am aware of the state of Wisconsin's challenge to U.S.

Environmental Protection Agency's ("EPA") final rule as to, Findings of Failure To Attain and Reclassification of Areas in Illinois, Indiana, Michigan, Ohio, and Wisconsin as Serious for the 2015 Ozone National Ambient Air Quality Standards, 89 Fed. Reg. 101901 (Dec. 17, 2024) ("Final Rule"). The Final Rule reclassifies the Milwaukee, Kenosha, and Sheboygan nonattainment areas ("Areas") from moderate to serious nonattainment after EPA determined that the Areas failed to attain the 2015 Ozone National Ambient Air Quality Standard.

11. I am aware that the EPA had designated all of Milwaukee, Kenosha, and Sheboygan areas as failing to meet federal health standards for ozone. I understand that because these areas continued to fail to meet the federal ozone standards, that the EPA is reclassifying these areas from "moderate" nonattainment to "serious" nonattainment status, which will result in additional environmental and pollution reduction control measures.

12. I understand that the Final Rule will impact several industrial sources of ozone air pollution in the surrounding areas including the Oak Creek Power Plant, Elm Road Generating Station, Edgewater Generating Station, and the currently under development Paris Generating Station, South Oak Creek CT Project, and Red Oak Ridge Energy Center. The Sierra Club Wisconsin Chapter and the national Sierra Club Beyond Coal Campaign have engaged in advocacy pertaining to all of these facilities across various state and federal venues including

submitting comments to the Wisconsin Department of Natural Resources, intervening in dockets at the Wisconsin Public Service Commission, pursuing air quality enforcement actions in federal court, and many other efforts to educate the public about the impacts of air pollution and negative rate impacts resulting from these facilities.

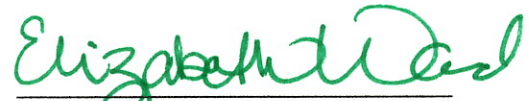
13. As the Wisconsin Chapter Director, I am also familiar with the nature and scope of Sierra Club's membership programs, its membership records, and the manner in which information on members can be retrieved. Sierra Club regularly maintains membership records that include the address of each member. These records are regularly updated to add new members, reflect address changes, and remove the membership status of persons who are no longer members.

14. Based on membership records as of April 2026, Sierra Club has nearly 600,000 members nationwide. Members reside in each of the 50 states of the United States, as well as the District of Columbia and Puerto Rico, and several U.S. territories. Over 15,000 Sierra Club members reside in Wisconsin. Of those members, roughly 1,498 reside in Milwaukee County, 227 reside in Kenosha County, and 174 reside in Sheboygan County.¹

¹ References to “members” here includes both single memberships and joint memberships. Therefore, the actual total number of individual members is greater than stated.

I declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury that the foregoing is true and correct.

Executed on August 26, 2026


Elizabeth Ward

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT**

STATE OF WISCONSIN,	)	
	)	
Petitioner,	)	
	)	
v.	)	
	)	
UNITED STATES	)	
ENVIRONMENTAL PROTECTION	)	Case No. 25-1239
AGENCY and LEE ZELDIN,	)	
Administrator,	)	
	)	
Respondents.	)	
	)	

DECLARATION OF SHARON HILLRINGHOUSE

I, Sharon Hillringhouse, declare as follows:

1. My name is Sharon Hillringhouse. I am over 18 years old. The information in this declaration is based on my personal experience and my review of publicly available information. I have personal knowledge of the following facts, and if called as a witness could testify competently to them. As to those matters which reflect an opinion, they reflect my personal experience, opinion and judgment on the matter.
2. I live in Caledonia, Wisconsin. I have lived here for six years but have lived

in Wisconsin for about 30 years.

3. I have been a member of the Sierra Club since roughly 2001. I joined Sierra Club because of my personal experience with air pollution and my love for outdoor spaces. Growing up in New Jersey, I experienced frequent air pollution from the state's industrial facilities, which taught me the importance of preserving air quality for the wellbeing of the community. When I moved to Wisconsin, I fell in love with the open, green areas boasted by the state, which made me further appreciate natural spaces and efforts to protect them for future generations.
4. I enjoy spending my free time outdoors. Some areas I regularly visit include Grant Park, Conservancy for Healing and Heritage, Bender Park, and several horse trails around Caledonia near the Oak Creek Power Plant and around Racine County. When I visit these places, I like to walk with friends and spend time with my grandchildren. These visits give me a chance to relax and feel rejuvenated as well as spend time with loved ones.
5. I also partake in light gardening at or around my home in the city of Caledonia which is located in Racine County.
6. As a senior citizen, I am particularly vulnerable to air pollution. For many years, I have struggled with asthma. I experience unbearable symptoms on days with heavy air pollution such as nasal congestion, fatigue, and

shortness of breath. When air quality is poor, I become concerned about the impact it may have on my health during my outdoor activities. My respiratory symptoms are so uncomfortable that I routinely monitor the air quality conditions near my home and avoid or limit outdoor activities when there are pollutants or allergens in the air.

7. Because of my respiratory ailments, I am very concerned about pollution, specifically ozone or smog pollution, from Oak Creek Power Plant. I live two miles from the plant, so pollution from the smokestacks easily reaches my home and favorite recreational areas. This air pollution causes me to limit my time outdoors on smoggy days, decreasing my ability to enjoy natural spaces. For example, I enjoy taking my granddaughter to the playground at Bender Park once every several weeks, but we often shorten our stays at this park during the summer because of air pollution.
8. I am aware that fossil fuel power plants, like the Oak Creek coal plant, contribute to ozone air pollution by emitting nitrogen oxides (“NOx”), which combine with other pollutants in the air to form smog.
9. I understand that breathing in these pollutants can cause or exacerbate health issues, including asthma.
10. Accordingly, I submit this declaration in support of the Motion to Intervene in support of Respondent U.S. Environmental Protection Agency (“EPA”)

by Sierra Club as to the state of Wisconsin's challenge to EPA's final rule, Findings of Failure To Attain and Reclassification of Areas in Illinois, Indiana, Michigan, Ohio, and Wisconsin as Serious for the 2015 Ozone National Ambient Air Quality Standards, 89 Fed. Reg. 101901 (Dec. 17, 2024) ("Final Rule").

11. I am aware that EPA's Final Rule had designated all of Milwaukee, Kenosha, and Sheboygan areas, which includes my home county of Racine, as failing to meet federal health standards for ozone. I understand that because these areas continued to fail to meet the federal ozone standards, that EPA is reclassifying these areas from "moderate" nonattainment to "serious" nonattainment status, which will result in additional environmental and pollution reduction control measures.
12. I am aware that the state of Wisconsin has challenged EPA's determination on the reclassification, arguing that the contributing ozone emissions came from out-of-state. As part of this, Wisconsin requested that this Court grant a stay of the rule, which EPA took no position on.
13. My understanding is that EPA's Final Rule aims to reduce ozone air pollution from industrial sources like the Oak Creek Power Plant near my home.

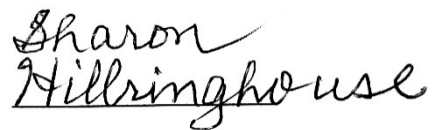
14. I am aware of We Energies' plans to convert the existing Oak Creek Power Plant from coal to gas and its delays in doing so.
15. I am troubled by the rapid growth in fossil fuel generation that we are seeing in southeast Wisconsin and the subsequent air pollution and health impacts that are occurring and that will continue to worsen without EPA's action. I am also concerned about the potential future impacts of air pollution on the health of my family and on other community members. I understand that ozone-forming pollutants such as NO_x and volatile organic compounds damage public health. I know that according to the EPA, even at low levels, these pollutants can aggravate respiratory and heart issues and even cause premature death. This is something that deeply concerns me. Knowing that the air quality is degraded by ozone pollution would negatively impact my ability to enjoy outdoor recreational activities in my community.
16. If the Court upholds EPA's Final Rule, I understand it would require industrial sources like Oak Creek Power Plant in the affected areas to comply with stricter ozone emissions limits including adding new or additional analyses of emission control measures to reduce ozone air pollution.
17. If EPA finalizes a more restrictive rule for air pollutants from fossil fuel generators, I will feel comfortable spending more time outdoors without

having to worry about air pollution impacts to my health. This would greatly improve my emotional and physical wellbeing, and it would allow me to spend more time with loved ones.

18. I support Sierra Club's efforts to ensure that EPA upholds the Final Rule that would help address the ozone air pollution problems in my community. I want to breathe as little pollution as possible. I believe that stronger action on ozone pollution would help lessen harms to my health when I recreate outdoors as well as harms to the green spaces and natural world that are so important to me.

Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed on August 25, 2026.

A handwritten signature in black ink that reads "Sharon Hillringhouse". The signature is written in a cursive, flowing style.

Sharon Hillringhouse