



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2015-0075; FRL-9950-86-Region 5]

Air Plan Approval; Wisconsin; Kenosha County 2008 8-Hour Ozone

Nonattainment Area Reasonable Further Progress Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving an Early Progress Plan and motor vehicle emissions budgets (MVEBs) for volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) for the Kenosha County, Wisconsin 8-hour ozone nonattainment area. Wisconsin submitted an Early Progress Plan for Kenosha County on January 16, 2015. This submittal was developed to establish MVEBs for the Kenosha 2008 8-hour ozone nonattainment area. This approval of the Early Progress Plan for the Kenosha 2008 8-hour ozone nonattainment area is based on EPA's determination that Wisconsin has demonstrated that the State Implementation Plan (SIP) revision containing these MVEBs, when considered with the emissions from all sources, shows progress toward attainment from the 2011 base year through a 2015 target year.

DATES: This direct final rule will be effective **[insert date 60**

days after date of publication in the Federal Register], unless EPA receives adverse comments by **[insert date 30 days after date of publication in the Federal Register]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2015-0075 at <http://www.regulations.gov> or via email to persoon.carolyn@epa.gov. For comments submitted at [Regulations.gov](http://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](http://www.regulations.gov). For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please

contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680, leslie.michael@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What Is the Background for This Action?
- II. What Are the Criteria for Early Progress Plans?
- III. What Is EPA's Analysis of the Request?
- IV. What Are the MVEBs for the Kenosha County 2008 8-Hour Ozone Nonattainment Area?
- V. What Action Is EPA Taking?
- VI. Statutory and Executive Order Reviews.

I. What Is the Background for This Action?

EPA's final rule designating nonattainment areas and

associated classifications for the 2008 ozone National Ambient Air Quality Standards (NAAQS) was published in the Federal Register on May 21, 2012 (77 FR 30088). A portion of Kenosha County was designated as marginal nonattainment. The Kenosha County 2008 8-hour ozone nonattainment area had been previously designated nonattainment as part of the larger Milwaukee area for the 1997 8-hour ozone standard and had MVEBs for NO_x and VOC established in the Wisconsin 1997 8-hour maintenance plan SIP. Consequently, the transportation partners in the Kenosha area have to use the 1997 8-hour ozone nonattainment MVEBs for the Milwaukee area to demonstrate transportation conformity for the 2008 8-hour ozone standard until new MVEBs are approved or found adequate, as required by the transportation conformity rule at 40 CFR 93.109(c)(2)(i). Wisconsin submitted this plan to establish new MVEBs for Kenosha County developed with EPA's MOVES2014 model.

II. What Are the Criteria for Early Progress Plans?

EPA allows for the establishment of MVEBs for the 2008 8-hour ozone standard prior to a state submitting its first required 2008 8-hour ozone SIP that would include new MVEBs. Although voluntary, these "early" MVEBs must be established through a plan that meets all the requirements of a SIP

submittal. This plan is known as the "Early Progress Plan." Specifically and in reference to Early Progress Plans, the preamble of the July 1, 2004, final transportation conformity rule (see, 69 FR 40019) reads as follows:

"The first 8-hour ozone SIP could be a control strategy SIP required by the Clean Air Act (e.g., rate-of-progress SIP or attainment demonstration) or a maintenance plan. However, 8-hour ozone nonattainment areas 'are free to establish, through the SIP process, a motor vehicle emissions budget or budgets that addresses the new NAAQS in advance of a complete SIP attainment demonstration. That is, a state could submit a motor vehicle emission budget that does not demonstrate attainment but is consistent with projections and commitments to control measures and achieves some progress toward attainment' (August 15, 1997, 62 FR 43799). A SIP submitted earlier than otherwise required can demonstrate a significant level of emissions reductions from current level of emissions, instead of a specific percentage required by the Clean Air Act for moderate and above ozone areas."

The Early Progress Plan must demonstrate that the SIP revision containing the MVEBs, when considered with emissions from all sources, and when projected from the base year to a

future year, shows progress toward attainment. EPA has previously indicated that a 5 percent to 10 percent reduction in emissions from all sources could represent a significant level of emissions reductions from current levels (69 FR 40019). This allowance is provided so that areas have an opportunity to use the budget test to demonstrate conformity as opposed to the interim conformity tests (*i.e.*, 2002 baseline test and/or action versus baseline test). The budget test with an adequate or approved SIP budget is generally more protective of air quality and provides a more relevant basis for conformity determinations than the interim emissions test. (69 FR 40026).

It should also be noted that the Early Progress Plan is not a required plan and does not substitute for required submissions such as an attainment demonstration or rate-of-progress plan, if such plans become required for the Kenosha 8-hour ozone area.

III. What Is EPA's Analysis of the Request?

On January 16, 2015, the State submitted to EPA an Early Progress Plan for the sole purpose of establishing MVEBs for the Kenosha 2008 8-hour ozone nonattainment area. The submittal utilizes a base year of 2011, and a projected year 2015 to establish NO_x and VOC MVEBs. The planning assumptions used to develop the MVEBs were discussed and agreed to by the Kenosha

interagency consultation group, which consists of the transportation and air quality partners in the Kenosha 2008 8-hour ozone nonattainment area. Tables 1 and 2 below show the differences by source categories between the 2011 base year and 2015 forecast year. The NO_x and VOC emissions in tons per day (tpd) within the Kenosha nonattainment area are expected to decrease significantly, 6.9 percent and 8.9 percent, respectively, between 2011 and 2015. These emission trends demonstrate that progress will be made towards attainment of the 2008 8-hour ozone NAAQS.

Table 1. Kenosha County 2008 Ozone Nonattainment Area NO_x Emissions

Kenosha County NO_x Emissions		
Source	2011 NO_x (tpd)	2015 NO_x (tpd)
Point	8.80	6.15
Area	1.09	1.33
On-road Mobile	5.17	4.40
Non-Road Mobile	2.14	1.69
Total	17.17	15.98
Total Percent Reduction	6.9%	

Table 2. Kenosha County 2008 Ozone Nonattainment Area VOC Emissions

Kenosha County VOC Emissions		
VOC Source	2011 VOC (tpd)	2015 VOC (tpd)
Point	0.70	2.63
Area	4.78	4.72
On-road Mobile	2.38	1.99
Non-Road Mobile	1.46	1.08
Total	9.32	8.49
Total Percent Reduction	8.9%	

EPA found these MVEBs adequate for transportation

conformity purposes in an earlier action (80 FR 17428, April 1, 2015). As of April 16, 2015, the effective date of EPA's adequacy finding for these MVEBs, conformity determinations in Kenosha County must meet the budget test using these 2008 8-hour ozone MVEBs, instead of the 1997 8-hour ozone MVEBs. Please note that this adequacy finding does not relate to the merits of the SIP submittal, nor does it indicate whether the submittal meets the requirements for approval. This EPA rulemaking action takes formal action on the Early Progress Plan SIP revision.

IV. What Are the MVEBs for the Kenosha 2008 8-Hour Ozone

Nonattainment Area?

Through this rulemaking, EPA is approving the 2015 regional MVEBs for NO_x and VOC for the Kenosha County 2008 8-hour ozone nonattainment area. EPA has determined that the MVEBs contained in the Early Progress Plan SIP revision are consistent with emission reductions from all sources within the nonattainment area and are showing progress toward attainment.

The 2015 MVEBs in tpd for VOCs and NO_x for the Kenosha County, Wisconsin nonattainment area are as follows:

Area	2015 NO_x (tpd)	2015 VOCs (tpd)
Kenosha County	4.397	1.944

V. What Action Is EPA Taking?

EPA is approving Kenosha's Early Progress Plan, including

the 2015 MVEBs for NO_x and VOC. The Early Progress Plan demonstrates progress towards attainment of the 2008 8-hour ozone NAAQS for the Kenosha nonattainment area. The NO_x and VOC emissions reductions from 2011 to 2015 for Kenosha County nonattainment areas were 6.9 percent and 8.9 percent, respectively. These emission reductions are based on control measures that are permanent and enforceable and will continue to improve air quality in the region, thus demonstrating that the MVEBs are showing progress toward attainment.

EPA issues this direct final rulemaking in response to Wisconsin's January 16, 2015 submittal of an Early Progress Plan. This revision is a voluntary SIP revision for the sole purpose of establishing MVEBs for the purpose of implementing transportation conformity in the Kenosha County 2008 8-hour ozone nonattainment area.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective **[insert date 60 days after date of**

publication in the Federal Register] without further notice unless we receive relevant adverse written comments by **[insert date 30 days after date of publication in the Federal Register]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[insert date 60 days after date of publication in the Federal Register]**.

VI. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet

the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect,

the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules

section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds, Oxides of Nitrogen.

Dated: August 5, 2016.

Robert A. Kaplan,
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2585 is amended by adding paragraph (ee) to read as follows:

§ 52.2585 Control strategy; Ozone

* * * * *

(ee) Approval — On January 16, 2015, the State of Wisconsin submitted a revision to its State Implementation Plan for Kenosha County, Wisconsin. The submittal established new Motor Vehicle Emissions Budgets (MVEB) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_x) for the year 2015. The MVEBs for Kenosha County nonattainment area are now: 1.994 tons per day of VOC emissions and 4.397 tons per day of NO_x emissions for the year 2015.

[FR Doc. 2016-20002 Filed: 8/22/2016 8:45 am; Publication Date: 8/23/2016]