



EIGHT WISCONSIN COUNTIES NOW MEET OZONE STANDARD

Substantial Regulatory Relief at Hand

(Nov. 1, 2006)

Substantial regulatory relief is just around the corner for businesses and citizens located in those Wisconsin counties previously violating the federal ozone standard. After decades of straining under federal Clean Air Act ozone mandates, virtually the entire state of Wisconsin now meets the stringent new 8-hour ozone standard – years before the 2009/10 compliance deadlines. Those two counties that barely missed hitting the standard (Door and Sheboygan) are on a glide-path to do so before the upcoming deadline.

EXECUTIVE SUMMARY

This report uses preliminary ozone data for the 2006 ozone season, which ended on September 30. Wisconsin DNR must assure the 2006 data meets EPA quality assurance criteria, but the significant progress in reducing ozone levels over the past years is uncontested. The table below shows the status of those monitoring sites that at one time registered ozone levels at or above the 85 parts per billion (ppb) standard, or that were otherwise in a nonattainment area.

Ozone Design Values (85 ppb or Greater = Violation)					
County	Monitor	2003	2004	2005	2006
Nonattainment Counties					
Door	Newport State Park	94	88	90	86
Kewaunee	Kewaunee	93	87	86	79
Manitowoc	Manitowoc	90	83	87	82
Sheboygan	Sheboygan	100	92	89	86
Nonattainment Milwaukee-Racine CMSA					
Milwaukee	Milw-16th St	-	-	70	68
Milwaukee	Milw-DNR Hdqrts	84	76	77	74
Milwaukee	Milw-UWM	86	79	83	79
Milwaukee	Milw-Bayside	94	88	86	79
Milwaukee	South Milwaukee	94	-	-	-
Ozaukee	Grafton	92	85	85	78
Ozaukee	Harrington Beach	98	88	88	79
Racine	Racine	95	87	82	78
Kenosha	Chiwaukee	101	94	86	83
Washington	Slinger	83	77	75	70
Waukesha	Cleveland Ave	-	-	-	68
Violating Monitors		11	8	8	2

What is particularly astonishing is that Kenosha County has met the standard – the Chiwaukee monitor registered 101 ppb ozone reading for 2003. Having that monitor come into compliance by dropping 18 ppb in only three years was crucial. For the six-county Milwaukee-Racine Consolidated Metropolitan Statistical Area (CMSA), if any one monitor in any of the six counties violates the standard, then all six counties would be considered nonattainment.

Without doubt, substantial emissions reductions by businesses and citizens across the Midwest have resulted in real and enduring reductions in ozone levels. And we're not done. New programs already on the books but not yet implemented will ensure Wisconsin's air quality is further improved. For example, EPA's new Clean Air Interstate Rule (CAIR) will result in a 60 percent reduction in ozone-forming NOx emissions across the U.S. from the electric utility sector. Federal mobile and area source programs such as EPA's Tier 2/low sulfur gasoline rule, highway diesel rule, and the non-road diesel rule, combined with fleet turnover, also will result in substantial future emission reductions.

At this time, virtually everyone in Wisconsin is breathing air meeting the stringent federal health standard for ozone. In the near future, the entire state will meet the standard as those limited, but stubborn air quality monitors in Door and Sheboygan counties come into compliance. The added benefit earned by our cleaner air will be meaningful regulatory relief for Wisconsin businesses.

The regulatory benefits associated with ozone compliance are two-fold. First, meeting the ozone standard allows DNR to unwind some of the more serious regulatory hurdles now facing businesses wishing to locate or expand in Wisconsin. For example, no longer required will be mandates on certain new or modified sources to install the most stringent control technology and to obtain reductions from other sources that offset their expected emissions. Second, reaching attainment will preempt the need to develop an Attainment Demonstration State Implementation Plan (Attainment SIP) and related mandates for those counties now in compliance.

The Attainment SIP was due EPA by June 15, 2007. Initially, DNR proposed that draconian mandates be imposed on Wisconsin businesses. Driven by flawed modeling, DNR projected that severe reductions from Wisconsin utilities were necessary to meet the ozone standard. In turn, Wisconsin businesses and homeowners across the state would have seen staggering increases in energy costs. New mandates on businesses in the ozone nonattainment areas also were proposed to be layered over existing regulatory programs.

Wisconsin industry argued for well over a year that DNR's assessment of required ozone measures was deeply flawed. Air quality trends seen before this year already evidenced that no further mandates would be required to meet the ozone standard. (See [Hamilton Consulting's Ozone Update; Nov. 1, 2005.](#)) The fact that we have come into compliance years before the compliance deadlines should finally debunk DNR's assertions that severe mandates are required.

Additional challenges are pending, however. DNR and EPA need to recognize that Door and Sheboygan counties will reach attainment without the imposition of additional mandates in or upwind of those counties. In this regard, DNR and EPA need to repudiate the junk science modeling used to date to project that even the most severe reductions would not have resulted in compliance. In addition, while long-term compliance is assured, we will have to submit what is called a Maintenance SIP to assure compliance continues over the near-term. These challenges will be met as our significant improvements in air quality are not a fluke but the result of substantial and permanent reductions in ozone-forming emissions.

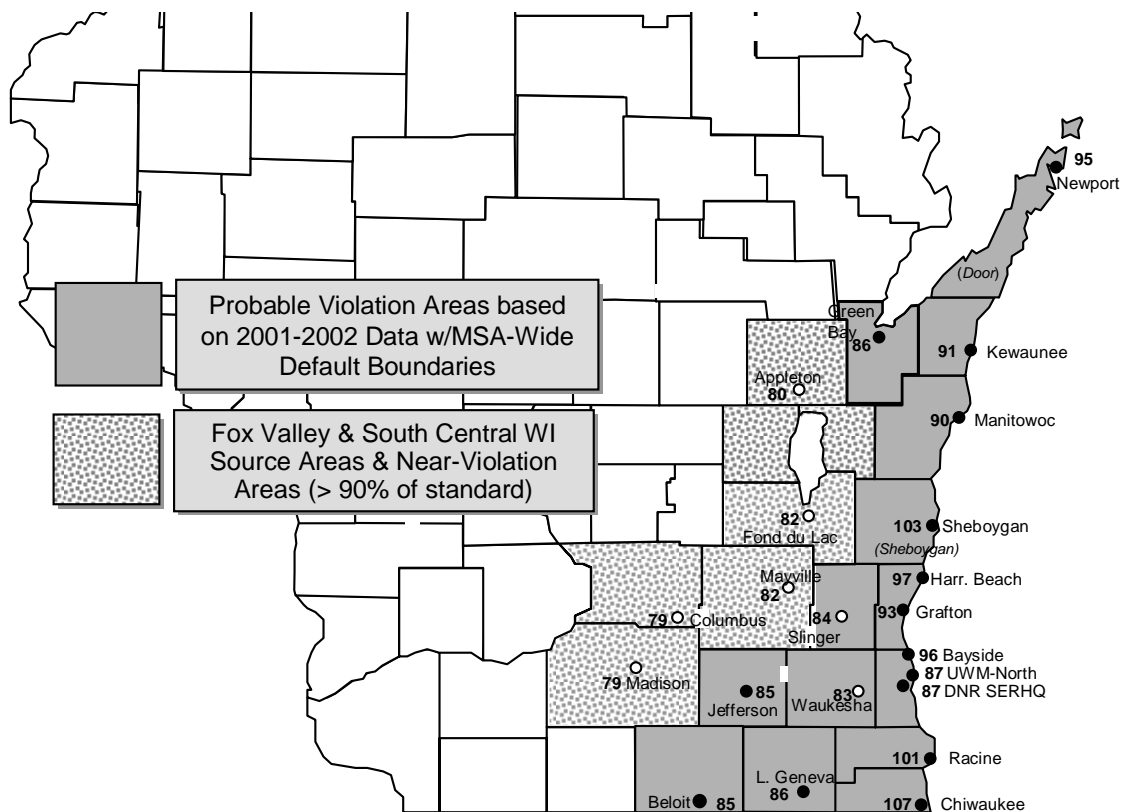
I. THE OZONE NONATTAINMENT DESIGNATION PROCESS

Ozone regulatory requirements are imposed when a county is designated as an ozone nonattainment area. Mandates imposed in nonattainment areas target all sectors, including manufacturing and utilities (stationary sources), smaller “areas” sources, as well as mobile/transportation sources. The new 8-hour ozone standard was finalized in 2002 triggering the process of designating areas either nonattainment or attainment. Generally, an area is in violation of the standard and considered nonattainment if the average fourth highest 8-hour ozone reading at any monitor within the area over the prior three years is 85 ppb or higher. This average reading for any three-year period is considered the area’s “design value.”

A. DNR’s 2003 proposed 8-Hour Ozone Nonattainment Designations. Under the Clean Air Act, states must submit proposed nonattainment designations for areas violating the new 8-hour standard. In 2003, DNR proposed to designate as nonattainment numerous Wisconsin counties in compliance with the standard because DNR projected a violation or because they were close to noncompliance and contributing to adjacent nonattainment violations. It was the first of many instances in which DNR overstated our ozone problem.

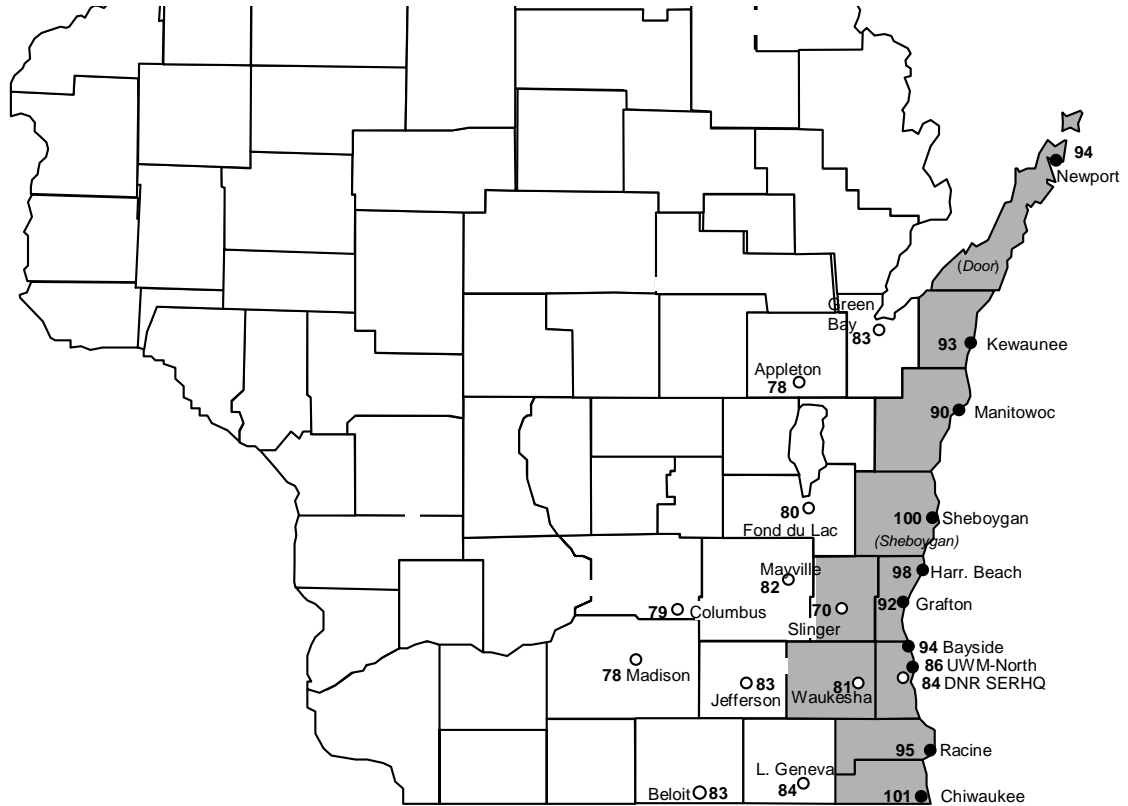
The map below illustrates DNR’s initially proposed nonattainment areas. The ozone levels noted reflect an average of the 2002-03 ozone readings, which, if held true would have in fact caused 14 counties to be deemed nonattainment.

DNR Projected Nonattainment Counties



B. 2004 Nonattainment Designations & Classifications. On April 15, 2004 [EPA designated nonattainment areas](#) throughout the country that exceeded the 8-hour ozone standard. This initial designation reflected actual 2001-03 ozone data, which resulted in 10 Wisconsin counties being designated nonattainment. The map below shows those counties and their 2001-03 design values.

Current Nonattainment Counties



As part of the designation process, EPA set forth criteria to classify the degree of noncompliance based on the area’s design value. Generally, more mandates are imposed on areas with higher classifications. Below is the listing of Wisconsin’s nonattainment counties and their respective classification and compliance deadlines. These designations and classifications remain in effective until EPA approves a redesignation request based upon 2004-06 monitoring data.

Nonattainment Areas	Counties	Classification	Attainment Date
Door Co	Door	Basic	June 2009
Kewaunee Co	Kewaunee	Basic	June 2009
Manitowoc Co	Manitowoc	Basic	June 2009
Sheboygan	Sheboygan	Moderate	June 2010
Milwaukee-Racine CMSA ¹	Milwaukee, Ozaukee, Racine, Washington, Waukesha, Kenosha	Moderate	June 2010

¹ Washington and Waukesha counties were considered nonattainment despite compliance with the standard because they are part of the six-county Milwaukee-Racine CMSA.

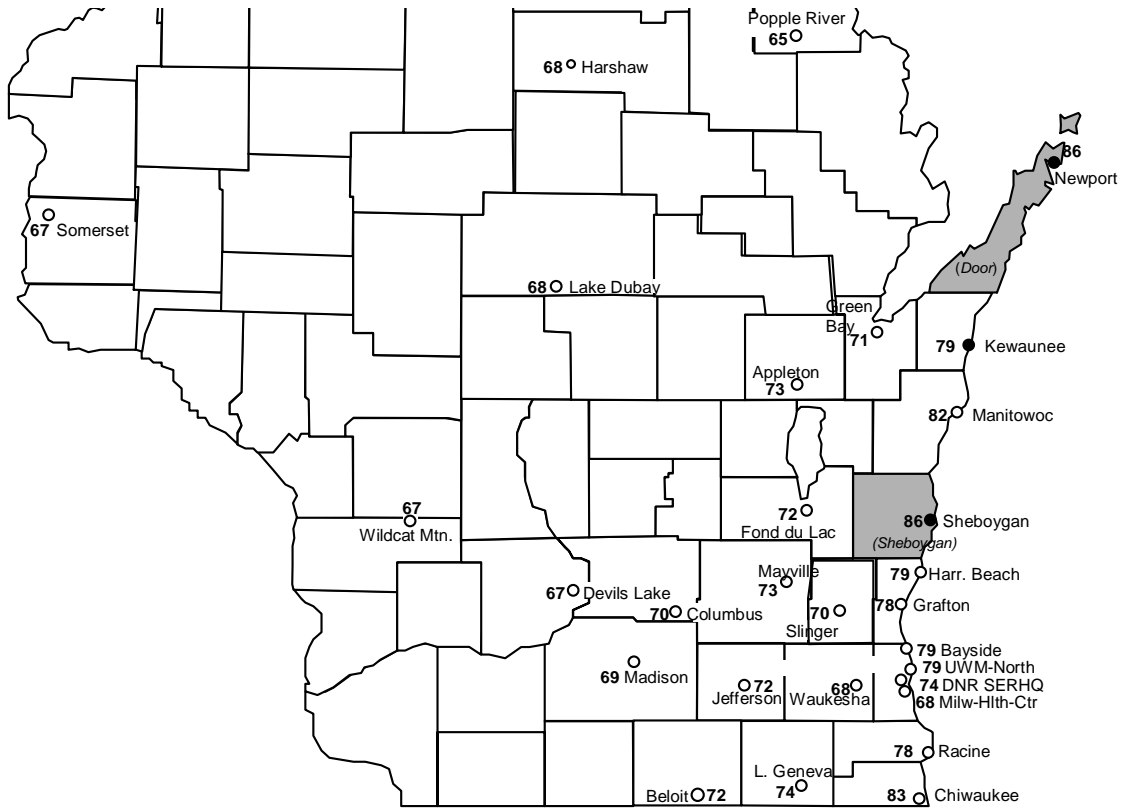
II. NONATTAINMENT STATUS USING 2004-06 MONITORING DATA

A. 2006 Preliminary Nonattainment Status. As noted above, the average of the fourth highest ozone readings for 2004-06 will determine the current design value/compliance status of Wisconsin counties. Recall also that any violating monitor (85 ppb or higher) in any Milwaukee-Racine CMSA county generally results in all six counties being considered nonattainment. The following table evidences the “projected” design values. While using actual 2004-06 data, these design values should be considered preliminary until the 2006 monitoring data is quality assured, including verification of the requisite number of monitoring days.

County	Monitor	4th Highest Reading			Design Value
		2004	2005	2006	
Nonattainment Counties					
Door	Newport State Park	78	101	79	86
Kewaunee	Kewaunee	73	88	77	79
Manitowoc	Manitowoc	74	95	78	82
Sheboygan	Sheboygan	78	97	83	86
Nonattainment Milwaukee-Racine CMSA					
Milwaukee	Milw-16th St	62	79	64	68
Milwaukee	Milw-DNR Hdqrts	64	90	68	74
Milwaukee	Milw-UWM	70	95	73	79
Milwaukee	Milw-Bayside	73	93	73	79
Ozaukee	Grafton	73	91	71	78
Ozaukee	Harrington Beach	72	94	72	79
Racine	Racine	69	95	71	78
Kenosha	Chiwaukee	78	93	79	83
Washington	Slinger	66	80	66	70
Waukesha	Cleveland Ave	60	79	67	68

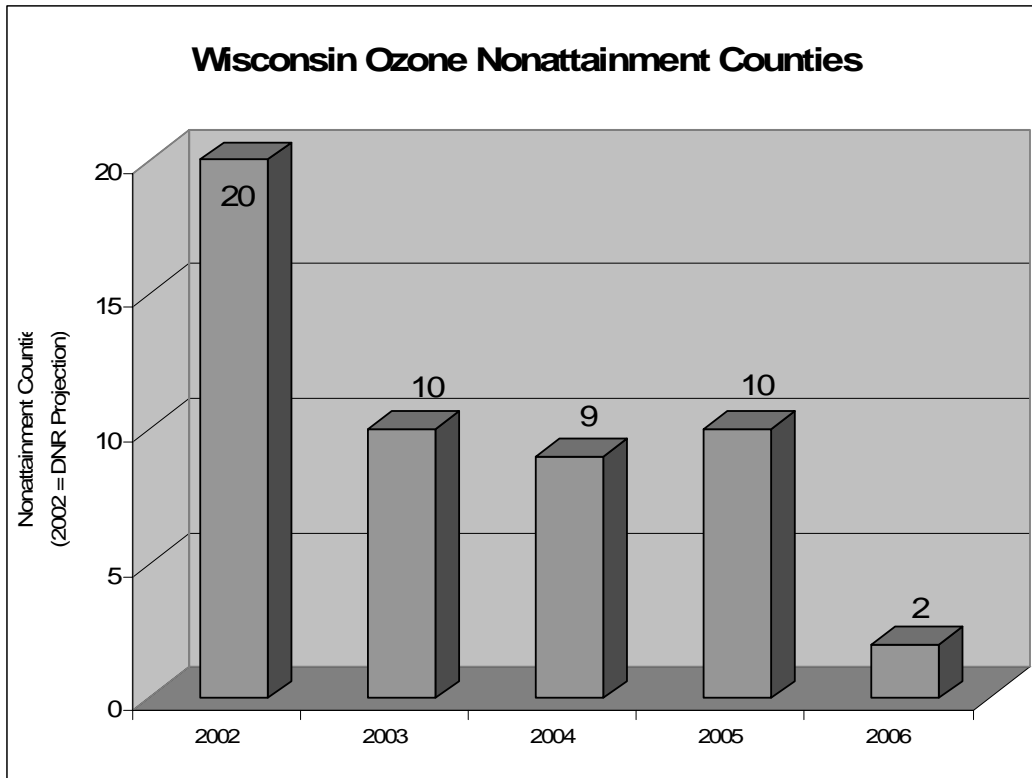
Because all monitoring sites in the Milwaukee-Racine CMSA meet the standard, the entire CMSA can be redesignated to attainment. Likewise, Kewaunee and Manitowoc counties separately meet the standard. Door and Sheboygan remain in noncompliance, but with a significant trend line toward compliance. The map below reflects the projected nonattainment status for Wisconsin and respective 2004-06 design values.

Preliminary 2006 Nonattainment Counties



B. Trends in Ozone Nonattainment Status. The charts set forth in the attached appendix demonstrate the dramatic ozone improvements made over the past few years in key counties. Worth noting are the improvements at “border county” monitoring sites. Those counties were noted by DNR as “probable violation areas” or “near-violation areas” in 2003. None of these counties are even remotely close to violating the standard at this time. Unfortunately, recent press coverage continues to erroneously note that Dane and Brown counties, for example, are on the verge of violating the standard.

As would be expected, the drastic reductions result in a significant reduction in the number of counties considered nonattainment. The below chart compares the number of counties DNR initially proposed to be designated nonattainment using 2001-02 ozone data, with the numbers of counties in nonattainment based on actual monitoring data. That is, in 2002 DNR proposed 20 counties be considered nonattainment. In 2006, only two counties are not meeting the standard. However, the official redesignations must undergo a rigorous EPA approval process, discussed in more detail below. So the current, official designations remain those approved by EPA in 2004, based on 2001-03 monitoring data (i.e., 10 counties).

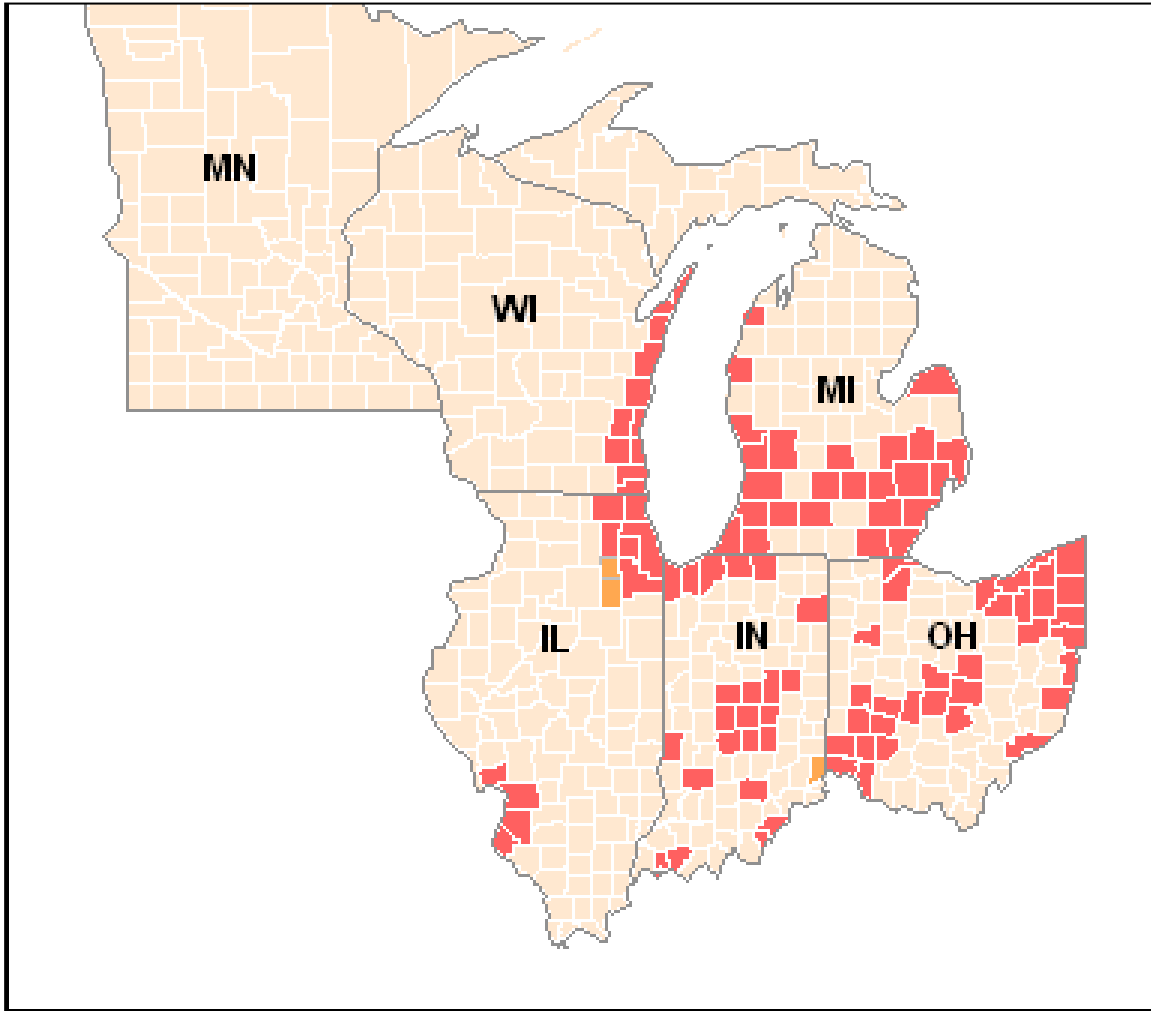


Also noteworthy is the significant ozone improvement being seen across the Midwest. Below is a map from EPA's web site that shows nonattainment counties in EPA Region 5 states at the time of EPA's initial designations. Close to 30 counties on or near Lake Michigan were in nonattainment.

According to EPA representatives, only Door, Sheboygan, and Allegan (Holland, Michigan) counties on or near Lake Michigan currently violate the standard using 2004-06 monitoring data. As Wisconsin goes from 10 to two nonattainment counties, Michigan will see a reduction from 25 to one. Other Midwest states are seeing similar improvements.

For the entire EPA Region 5 states (Wisconsin, Michigan, Indiana, Illinois, Ohio, and Minnesota), again, according to EPA, in addition to Door, Sheboygan, and Allegan counties, only Cleveland, Cincinnati, and St. Louis CMSAs are now violating the standard. These larger metropolitan areas contain numerous counties, but further analysis should find only a minor number of these counties that actually violate the standard and that the levels of ozone are significantly lower in all counties. These actual monitored ozone levels further expose the flaws in the modeling protocols being used by DNR and the Lake Michigan Air Directors Consortium (LADCO) that projects continued and significant ozone violations in Region 5 states even after severe new mandates.

EPA Region 5 Initial Nonattainment Areas



C. The “Cool Summers” Red Herring. In the past, DNR and LADCO argued that the ozone improvements are due to unusually cool weather. While 2004 was cool, 2005 and 2006 were anything but. In fact, using the same data used by DNR and LADCO to prove 2004 was unusually cool found that 2005 was hotter than 2004 was cool. (Globally, it was the hottest year ever recorded.) We expect that a review of 2006 meteorological data would find this past year to be similar to 2005.

In 2005, Milwaukee saw a 10-day hot streak in July with an average high over the period of 88 degrees, well above average July temperatures, including six days in the 90s. Yet, the average monitored 2005 design value for the five Milwaukee County monitoring locations was 77 ppb, far below the standard. And after another hot 2006 summer was added to the ozone formula, the average design value for Milwaukee County dropped again to 75 ppb.

In addition, the hot 2005 and 2006 summers did little to tip border counties toward nonattainment, as some expected. For example, in 2005 Madison saw a 16-day streak in July with an average high of 88 degrees and four straight days in the 90s. But as the “ozone alerts” flew off the DNR presses and the local media warned of ozone levels approaching “dangerous levels,” the fact of the matter was that Dane County’s 2005 design value was

73 ppb, and after another hot summer, its design value for 2006 dropped to 69, so distant from the 85 ppb standard there is absolutely no threat Dane County would ever reach nonattainment. The entire cool weather argument is simply a red herring from those refusing to acknowledge that the improvements in ozone are due to real and permanent reductions.

III. CLEAN AIR ACT REDESIGNATION PROCESS

The Clean Air Act sets forth the general requirements for redesignating a nonattainment area to attainment. In addition, EPA has numerous guidance documents and has published recent decisions on state redesignation requests that outline the general parameters for redesignation.

A. Clean Air Act Redesignation Requirements. Clean Air Act §107(d)(3)(E) allows for redesignation providing that:

- (1) EPA determines that the area has attained the applicable ozone standard;
- (2) EPA has fully approved the applicable ozone implementation plan for the area under section 110(k);
- (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable federal air pollutant control regulations and other permanent and enforceable reductions;
- (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and
- (5) The State containing such area has met all requirements applicable to the area under section 110 and Part D.

As noted above, Wisconsin can show that all but two counties attained the ozone standard. It is also clear that the improvements are due to permanent and enforceable reductions. That is, the implementation of existing regulatory programs assures the reductions are permanent and enforceable.

In making its determination that the state has a fully approved SIP, EPA will ascertain what requirements are applicable to the area, and determine that the applicable portions of the SIP meeting these requirements are fully approved under section 110(k). Applicable requirements of the Clean Air Act (CAA) **that come due subsequent to the area's submittal of a complete redesignation request** remain applicable until a redesignation is approved, **but are not required as a prerequisite to redesignation**. In that regard, the attainment demonstration is not an applicable requirement as it does not come due until June 2007, making it a subsequent requirement (assuming the redesignation request is submitted before June 2007). EPA has confirmed this critical point that Wisconsin will not have to submit an attainment demonstration for those eight counties now in attainment with the ozone standard.

In conjunction with its request to redesignate nonattainment areas to attainment status, Wisconsin must submit a SIP revision to provide for maintenance of the 8-hour ozone standard in the area for at least 10 years after redesignation. To address the possibility of future ozone violations, the maintenance plan must contain such contingency measures, with a schedule for implementation, as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. In that regard, redesignation plans from other states were

approved by EPA when such plans merely note that pending federal programs such as CAIR may be sufficient to address a subsequent violation. In other words, EPA has not required that new mandates be imposed to correct future violations so long as existing programs will assume continued air quality improvements.

B. Other State Requests for 8-Hour Redesignation. [EPA's Redesignation Request web page](#) notes that only Indiana in Region 5 has any requests that have been approved and in effect. However, there are numerous pending redesignation requests from EPA Region 5 states, some of which EPA has proposed to approve.

The Indiana Department of Environmental Management (IDEM) has made two recent requests. The first relates to Allen County, a basic nonattainment area. The request relies upon ozone levels for the 2003-05 ozone seasons. On August 30, 2006, EPA issued its direct final rule approving that request. A more pertinent request was IDEM's request to redesignate Lake and Porter counties. These counties, which are part of the Chicago-Gary-Lake County nonattainment area, are classified as "moderate" nonattainment areas. The Lake/Porter counties request also relies upon ozone levels for the 2003-05 ozone seasons. EPA has not acted on that request, but Wisconsin DNR submitted written objections that are part of the IDEM record.

A major point of contention of environmental groups, DNR and others objecting to the redesignation of Lake and Porter counties in Indiana is that those counties "significantly contribute" to downwind nonattainment areas, namely Illinois and Wisconsin, and possibly Michigan. The corollary argument is that the LADCO states entered into a regional Memorandum of Agreement (2004 MOA) that requires all states to reduce emissions to the benefit of all LADCO members. However, EPA was clear that CAIR specifically addresses the contribution requirement of the Act.

On May 9, 2006, the Michigan Department of Environmental Quality (MDEQ) submitted a request to redesignate 11 counties to attainment. On June 13, 2006, they made a similar request involving five additional counties. Both requests relied upon 2003-05 ozone data. We have not seen any EPA publications in response to these requests.

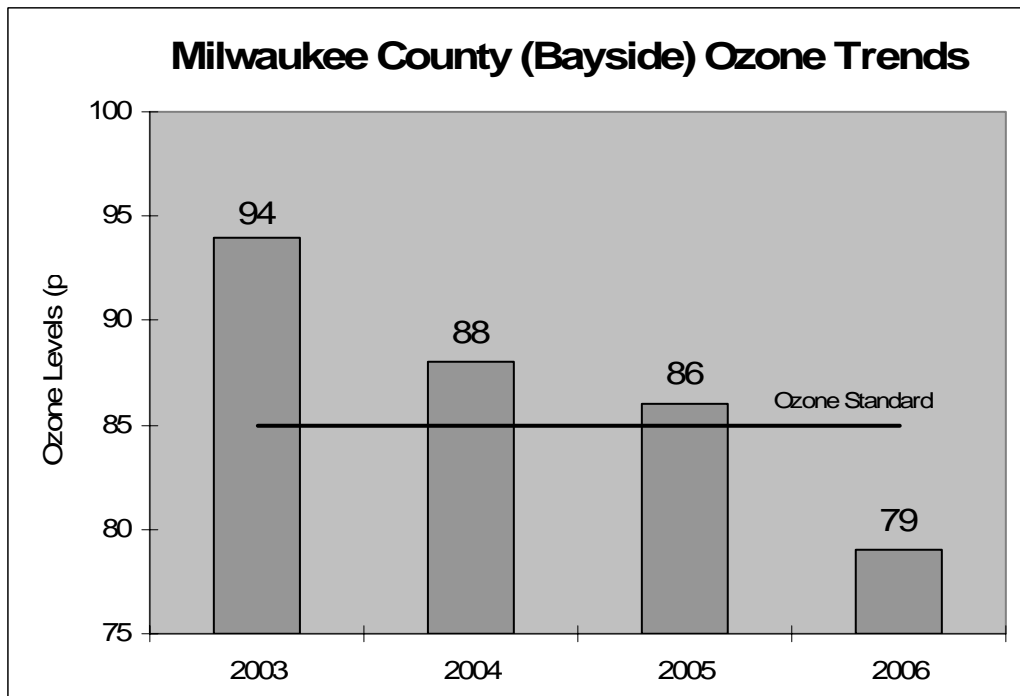
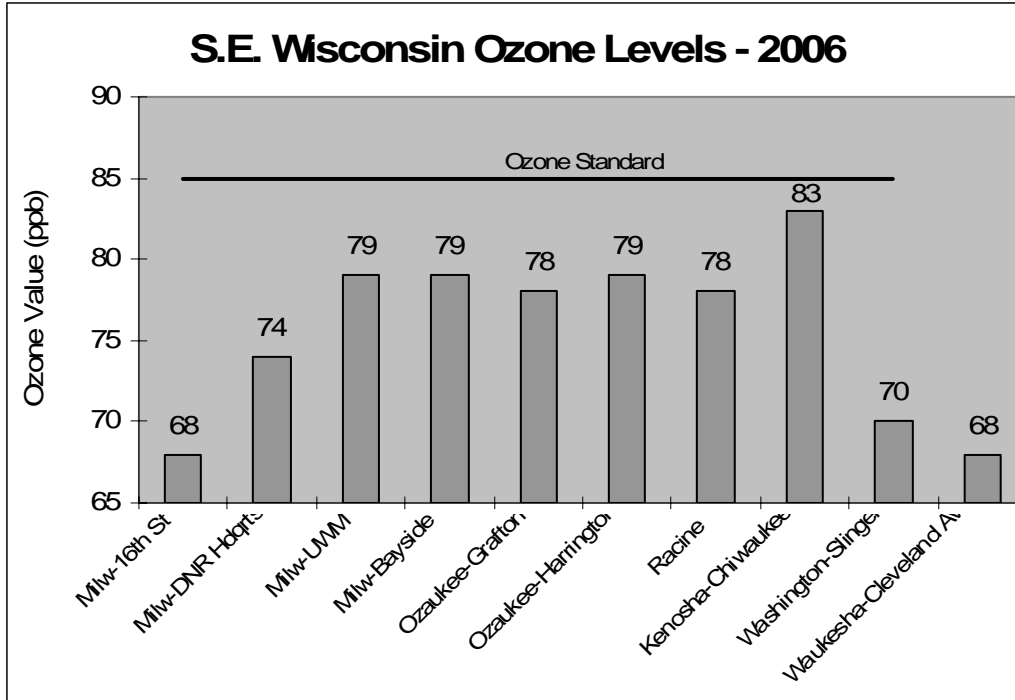
C. Conclusion. Assuming the preliminary ozone data for the 2006 ozone season is verified to EPA's satisfaction, all but two Wisconsin counties are in compliance with the ozone standard. Door and Sheboygan counties are at 86 ppb, just a hair short of compliance. New and existing EPA programs will assure all counties remain and Door and Sheboygan reach attainment by the 2009/10 compliance deadlines.

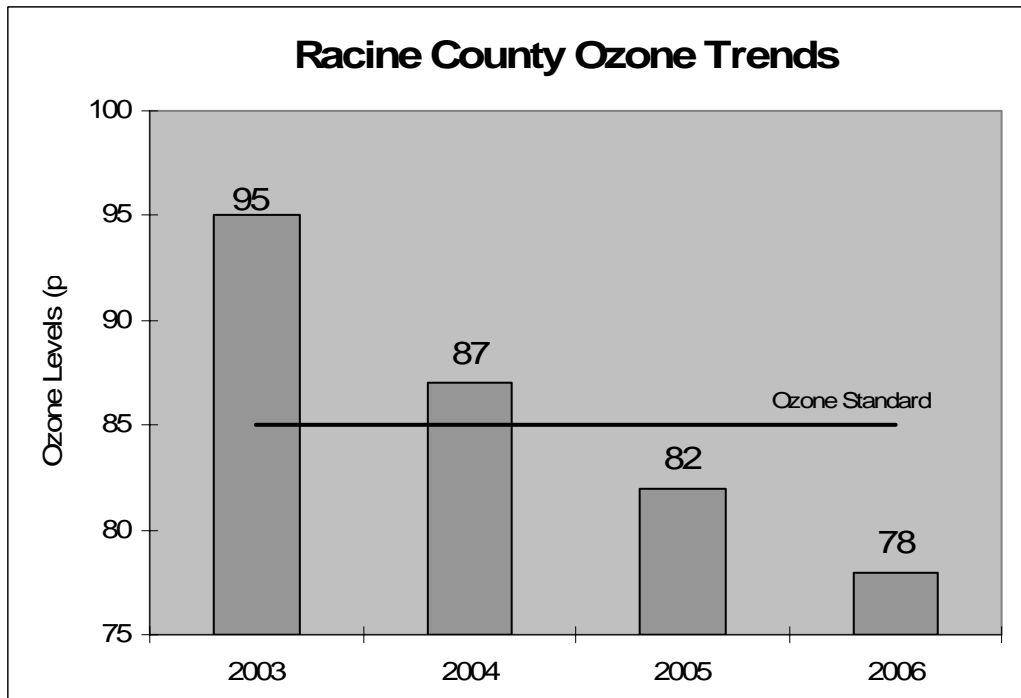
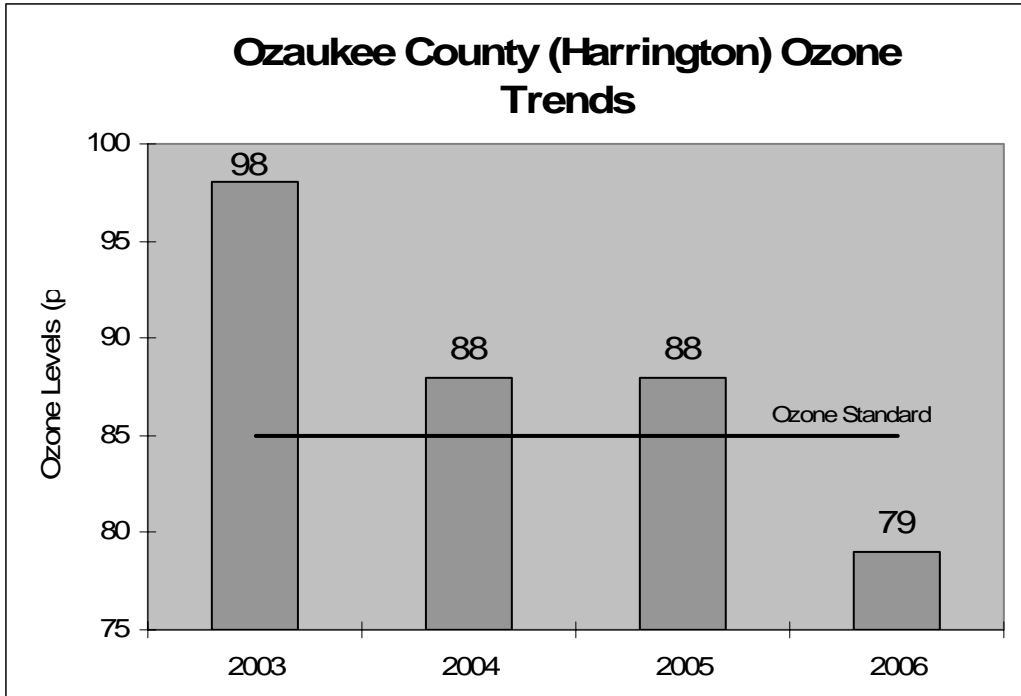
Because we meet the Clean Air Act redesignation requirements, EPA should approve a Wisconsin request to redesignate the eight counties now meeting the standard. EPA's prior approvals for other states support this conclusion. Moreover, EPA as acknowledged an attainment demonstration for those eight counties is not required. Although such a demonstration may be required for Door and Sheboygan counties, this demonstration should merely assert that existing programs will assure compliance and that no additional mandates are required.

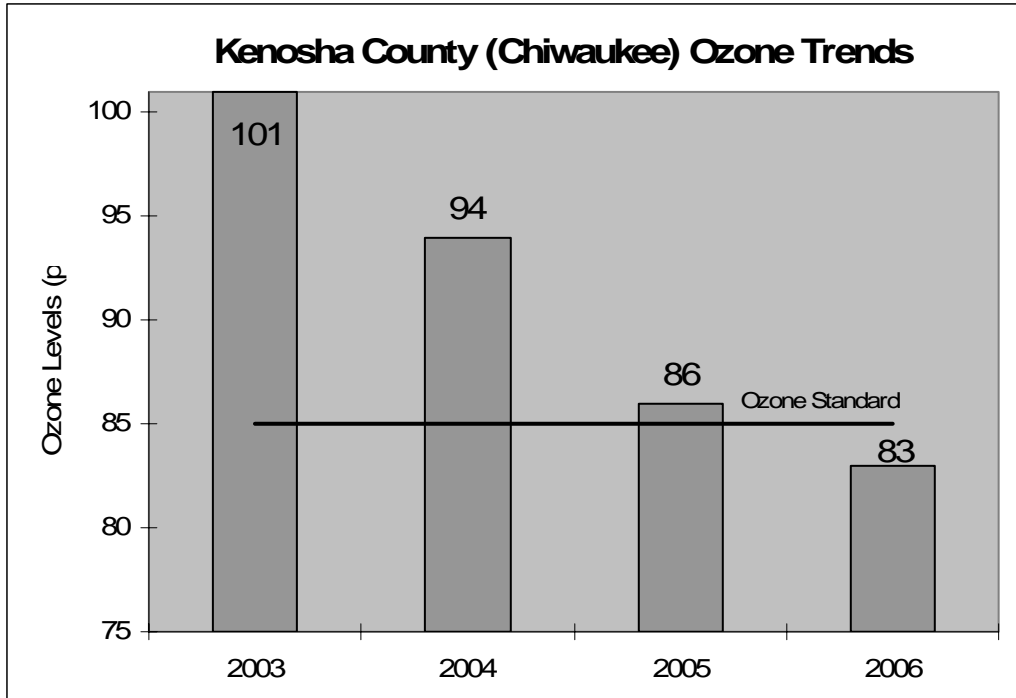
After decades of straining under federal Clean Air Act ozone mandates, virtually the entire state of Wisconsin now meets the stringent new 8-hour ozone standard – years before the 2009/10 compliance deadlines. Substantial regulatory relief should be just around the corner for businesses and citizens located in those Wisconsin counties previously violating the federal ozone standard. At this time, however, DNR continues to advance costly regulatory programs that are no longer needed. We will know soon if industry will see the long-awaited and much deserved compliance dividend.

APPENDIX OZONE IMPROVEMENTS BY COUNTY

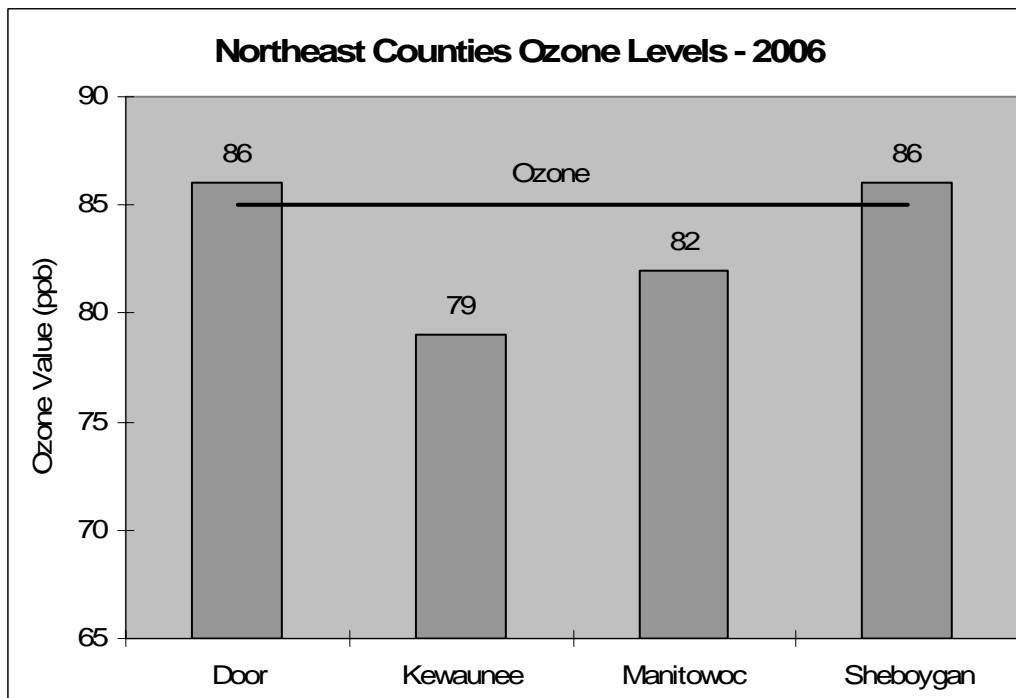
SOUTHEAST WISCONSIN

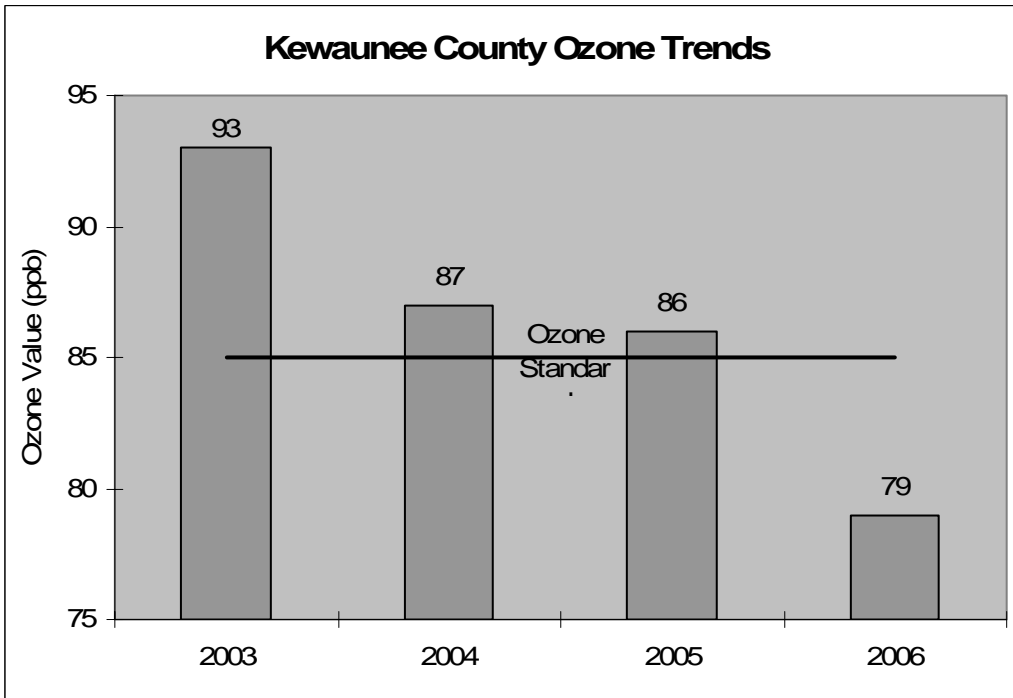
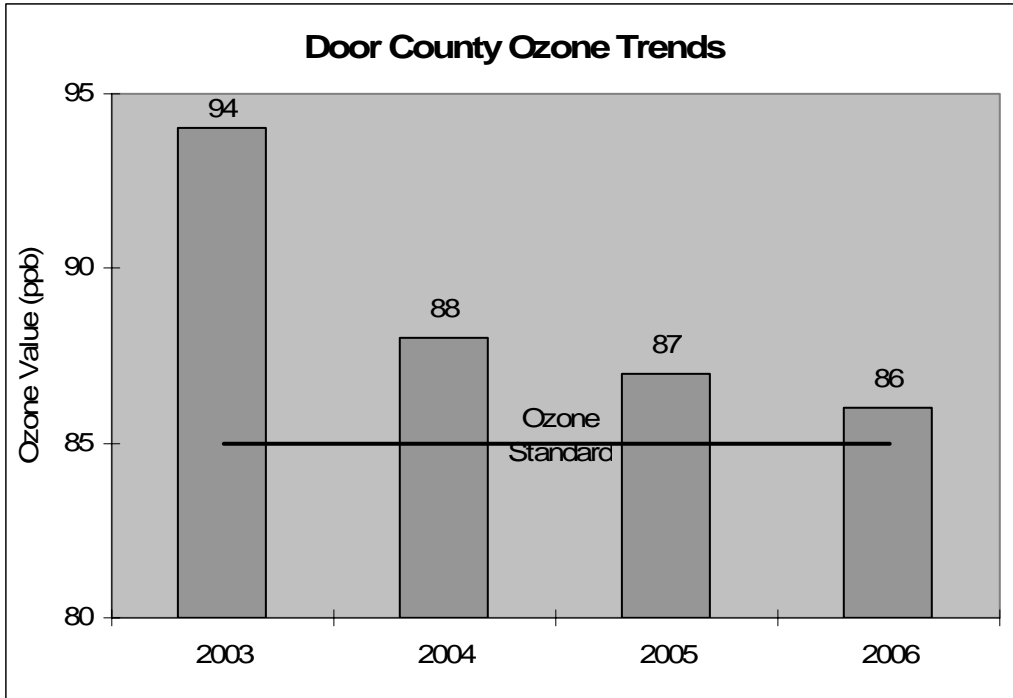


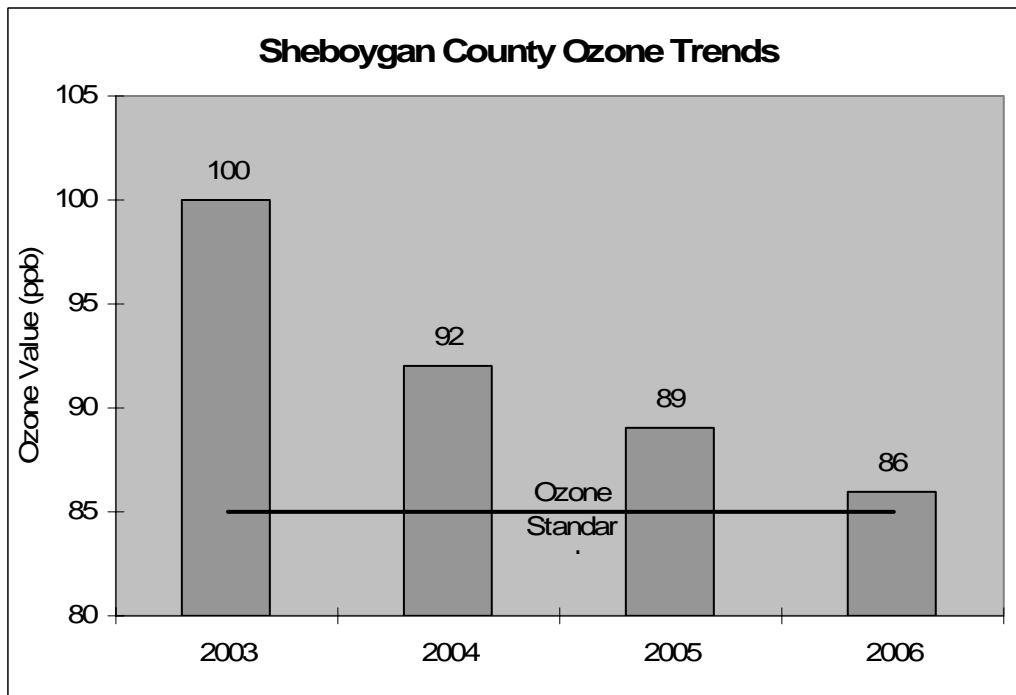
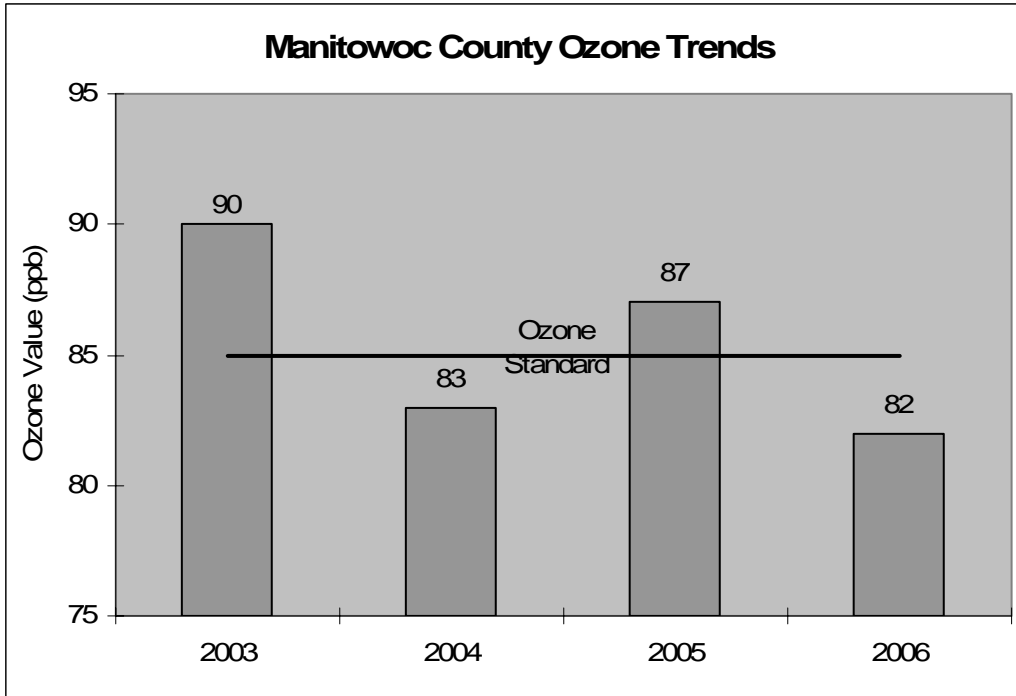




NORTHEAST WISCONSIN







"BORDER COUNTIES"

