



INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

We Protect Hoosiers and Our Environment.

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U.S. EPA Unfairly and Unnecessarily Singles Out Lake and Porter Counties as Nonattainment for the 0.075 ppm 8-hour Ozone Standard Adversely Impacting Economic Development in the 1st Congressional District

Why does a nonattainment designation adversely impact economic development?

When an area is designated as nonattainment, new or expanding businesses are subject to potentially expensive extra requirements. Most businesses will not make investments in nonattainment areas when locating in an attainment area is less expensive. Also the nonattainment stigma detracts from people's perception of the quality of life in an area.

Why should Lake and Porter Counties be designated as attainment for ozone?

At the end of 2011, the highest monitor in Lake and Porter Counties read 0.068 ppm well below the standard of 0.075 ppm. So far this year, in spite of this very hot summer with its many air quality action days, the highest reading in Lake and Porter Counties is 0.071 ppm, still well below the standard of 0.075 ppm.

Hasn't the air in Lake and Porter Counties Always Been Nonattainment?

No, the area was designated as attainment for all pollutants on February 6, 2012!

Lake, Porter, and the other 90 Indiana counties met all of the air quality standards at the end of the 2007-2009 measurement period. This was the first time in Indiana's history that all Hoosiers had air to breathe that met all air quality standards since the standards were developed under the Clean Air Act in the 1970s.

Why is U.S. EPA's Designation of Lake and Porter Counties as Nonattainment Unfair?

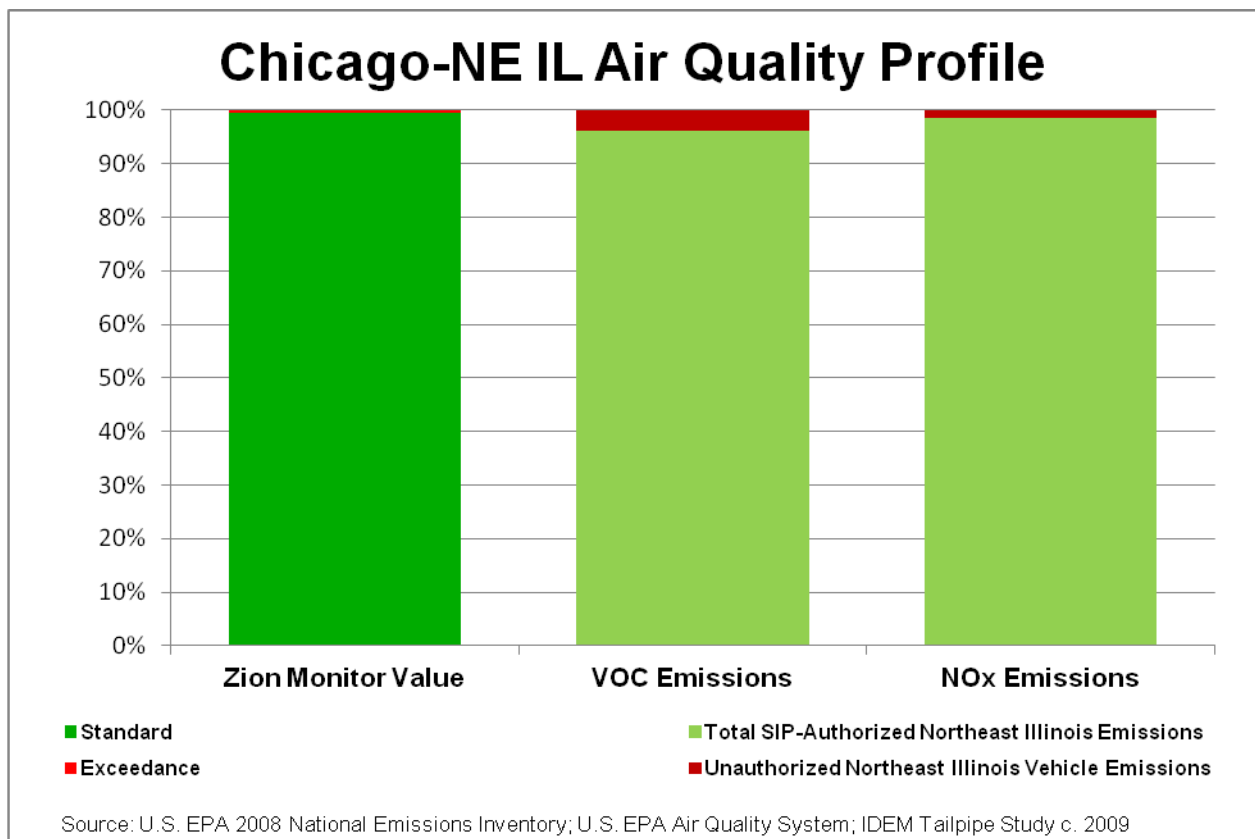
On December 9, 2011, U.S. EPA notified Governor Daniels that, based upon measured air quality, U.S. EPA would propose to designate Lake and Porter Counties as attainment for the new more stringent ozone air quality standard.

On January 31, 2012, U.S. EPA notified Governor Daniels that new air quality data submitted by Illinois on December 7, 2011, showed that a single monitor on the Illinois-Wisconsin border exceeded the standard by less than 1% (Zion monitor). Accordingly, U.S. EPA proposed to designate Lake, Porter and Jasper Counties as nonattainment because they are in the same Chicago metropolitan statistical area as the violating monitor.

On April 23, 2012, the Indiana Department of Environmental Management provided information to U.S. EPA demonstrating among other things:

1. The primary cause of the less than 1% violation of the standard on the Illinois-Wisconsin border is a 2007 action by the State of Illinois that exempted all pre-1996 vehicles from its vehicle emission testing program. The program would have reduced emissions of volatile organic compounds (VOC) and nitrous oxide (NOx) emissions, both of which form ozone. If these vehicles had continued to be tested and repaired, there is no doubt that the Illinois monitor would have measured below the standard – just like the other 20 monitors in the Illinois and Indiana portion of the Chicago metropolitan statistical area.

The chart below demonstrates how the Zion monitor barely exceeds the standard. The potential vehicle VOC and NOx emissions reduction from the unauthorized testing program change are larger than the amount of ozone that exceeded the standard.



Illinois never received approval from the U.S. EPA to make this change to its vehicle emission testing program; meaning that the change was unauthorized and contravenes Illinois' federally mandated State Implementation Plan (SIP) as well.

2. Air quality modeling shows that Milwaukee, which U.S. EPA designated as attainment for this standard, contributes more pollution to the Zion monitor than Lake and Porter Counties.

3. The Clean Air Act allows designations of portions of a metropolitan statistical area as attainment, while other portions of the area are nonattainment. The U.S. EPA has done this in other areas of the country for this rulemaking: Columbus, OH; Knoxville, TN; and Baton Rouge, LA have all benefited from U.S. EPA designating only part of a statistical area as nonattainment,

Based upon the April 23rd information, U.S. EPA decided that Jasper, but not Lake and Porter Counties would be designated as unclassifiable/attainment.

Are there any other areas of the country where U.S. EPA changed the proposed designation from attainment to nonattainment based upon 2011 air quality data?

No. The following areas of the U.S. had measured violations of the 0.075 ozone standard in 2011, but are officially designated as attainment by U.S. EPA:

1. St. Louis, MO (includes East St. Louis, IL): monitor in Madison County, IL 0.076 ppm
2. Louisville, KY: monitors in Jefferson and Oldham counties both 0.078 ppm
3. Lake Charles, LA: monitor in Jefferson Parish 0.080 ppm
4. Shreveport, LA: monitor in Bossier Parish 0.076 ppm
5. Detroit, MI: monitors in Macomb County 0.076 ppm and Wayne County 0.078 ppm
6. Grand Rapids, MI: monitors in Allegan County 0.078 ppm and Muskegon County 0.076 ppm
7. Kansas City, MO: monitor in Clinton County, MO 0.076 ppm
8. Dayton, OH: monitor in Montgomery County 0.076 ppm
9. Oklahoma City, OK: monitor in Oklahoma County 0.077 ppm
10. Tulsa, OK: monitor in Tulsa County 0.077 ppm
11. Beaumont, Port Arthur, TX: monitor in Jefferson County 0.076 ppm
12. Hood County, TX (adjacent to Dallas-Ft. Worth nonattainment area): monitor in Hood County 0.076 ppm
13. Longview, TX: monitor in Gregg County 0.077 ppm
14. Manitowoc, WI: monitor in Manitowoc County 0.077 ppm

Isn't U.S. EPA required to designate an entire CMSA as nonattainment if any portion of it is nonattainment?

No. 107(d)(4)(A)(iv) of the Clean Air Act says: "Notwithstanding paragraph (1)(C)(ii) of this subsection, if an ozone or carbon monoxide nonattainment area located within a metropolitan statistical area or consolidated metropolitan statistical area (as established by the Bureau of the Census) is classified ... as a **Serious, Severe, or Extreme Area**, the boundaries of such an area are hereby revised ... by operation of law to include the entire metropolitan statistical area or consolidated metropolitan statistical area, as the case may be" (Emphasis added.)

In the current case for ozone, the nonattainment of the Zion monitor is marginal - not "serious, severe or extreme" (note that there is also a "moderate" category which doesn't apply here, but would not require the entire CMSA to be designated as nonattainment). EPA Region 5 made exactly the opposite call in the case of Columbus, OH where Pickaway and five other counties in the CSA boundary were designated as attainment when the other six counties in the area were designated as nonattainment. Region 4 (in the Knoxville, TN area) and Region 6 (in the Baton Rouge, LA area) also have split

CMSAs for ozone designations, made at the same time as these designations. Even in this case, EPA Region 5 did not include all of Kenosha County in WI, Jasper or Newton Counties in IN or some Illinois counties that are in the CMSA.

Does EPA have a basis to include Lake and Porter Counties in the Chicago CMSA nonattainment area?

IDEM doesn't believe so. Based on IDEM inquiries, neither Illinois or Wisconsin provided any additional information to U.S. EPA that that could be used to determine culpability specific to the Zion monitor's readings from 2009-2011. In U.S. EPA's December 9, 2011 proposed designations, the agency reviewed all factors relevant to determining attainment status and concluded that Lake, Porter and Jasper Counties should be designated as attainment. Then, in its January 31 revision, with the only new information to evaluate being the 2011 monitoring data from Illinois, U.S. EPA concluded that these Indiana counties should be included in the Chicago nonattainment area. U.S. EPA stated that its revised designation proposal was supported by meteorological data and third-party modeling, in addition to the 2011 Illinois data, but IDEM questions the validity of U.S. EPA's assertion. In the first place, the meteorological data and third-party modeling remained unchanged from what U.S. EPA examined when it first proposed attainment for these Indiana counties. And, more importantly, because the meteorological data and third-party modeling was part of the original evaluation materials, they did not provide any information contemporaneous with the monitored nonattainment in 2011. IDEM believes U.S. EPA erred by using old meteorological data and third-party modeling to link Lake and Porter Counties to monitored nonattainment at the Zion site in 2011 instead of conducting a thorough analysis of relevant data to ascertain whether Lake and Porter Counties should remain attainment areas.

What Is Indiana doing to have U.S.EPA reconsider this designation?

Attorney General Zoeller has filed suit in the District of Columbia Circuit Court of Appeals asking for the U.S. EPA nonattainment designation to be replaced by the designation of attainment for all pollutants. Indiana's case argues that U.S. EPA did not have sufficient legal basis to designate these counties as nonattainment, and that the agency – to Lake and Porter Counties' detriment – treated these counties differently than similarly situated areas of measured attainment. U.S. EPA's inappropriate nonattainment designations also have adverse economic development impacts on Lake and Porter Counties, which reverses the positive effects of the attainment designations they received just this February. Based on this economic hardship, Indiana will ask that the court stay the effect of U.S. EPA's erroneous designations until the court can rule on Indiana's case.

Indiana is also considering other legal actions to give U.S. EPA the opportunity to change its mind and to urge Illinois to do its part to keep our shared air resources healthy for all to breathe.

Conclusion:

The tens of millions of dollars that businesses and citizens of Lake and Porter Counties have invested in clean air have had the desired effect: their measured air quality meets all of the health-based standards. Indiana will continue working to make sure that the official U.S. EPA designations appropriately recognize this accomplishment.