

area, to attain the 1-hour ozone standard. The final rule contains EPA's responses to the comments. (We also took one final action not relevant to today's proposed action and the Court's remand: the finding that BPA met the Reasonably Available Control Technology (RACT) requirements for major sources of Volatile Organic Compounds (VOC) emissions.)

A petition for review of the May 15, 2001, rulemaking was filed in the U.S. Court of Appeals for the Fifth Circuit. On December 11, 2002, the Court issued a decision in *Sierra Club v. EPA*, 314 F.3d 735 (5th Cir. 2002), reversing the portion of EPA's approval that extended BPA's attainment date to 2007 under the Transport Policy without reclassifying the area.² The Court also remanded to EPA the final actions related to the reversal: our approval of the attainment demonstration SIP and MVEB, the MCR commitment, and our finding that the area was implementing all RACM. The Court affirmed the portion of EPA's final

action that requires implementation only of control measures that contribute to attainment as expeditiously as practicable and considers implementation costs in rejecting control measures, but remanded EPA's specific determination regarding RACM in the BPA area so that any conclusions about the control measures may be adequately explained. In response to the reversal, we must withdraw our determination to extend the attainment deadline for BPA and our approval of the transport demonstration. In light of the lapse of time since EPA's prior proposal regarding the determination of nonattainment and reclassification, EPA is issuing this supplemental proposal that supersedes the April 16, 1999, proposal. In response to the remand, we are proposing to withdraw our final action approving the attainment demonstration SIP and MVEB and the MCR commitment and finding that BPA is implementing all RACM.

II. What Are the National Ambient Air Quality Standards?

Since the CAA's inception in 1970, EPA has set NAAQS for six common air pollutants: Carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The CAA requires that these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether or not the air quality in their communities is healthful.

III. What Is the NAAQS for Ozone?

The NAAQS for ozone is expressed in two forms called the 1-hour and 8-hour³ standards. Table 1 summarizes the 1-hour ozone standards.

TABLE 1. SUMMARY OF OZONE STANDARDS

Standard	Value	Type	Method of compliance
1-hour	0.12 ppm	Primary and Secondary	Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area.

(Primary standards are designed to protect public health and secondary standards are designed to protect public welfare and the environment.)

The 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979. The 1-hour ozone standard continues to apply to the BPA area, and it is the classification of the BPA area with respect to the 1-hour ozone standard addressed in this document.

IV. What Is a SIP and How Does It Relate to the NAAQS for Ozone?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meet the NAAQS established by EPA. Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These

SIPs can be extensive. They may contain state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

V. What Is the Beaumont/Port Arthur Nonattainment Area?

The Beaumont/Port Arthur moderate ozone nonattainment area is located in Southeast Texas, and consists of Hardin, Jefferson, and Orange Counties.

VI. What Is the Additional Context for This Proposed Rulemaking?

The Transport Policy provided for an extension of an area's attainment date if it were adversely affected by transport, without reclassification of the affected area. Consequently, when we granted the extension of the attainment date for BPA, we did not take action to finalize the April 16, 1999, proposed finding that BPA had not attained the 1-hour ozone standard by November 15, 1996.

We therefore did not reclassify BPA from "moderate" to "serious." The Court's ruling means that BPA's attainment date extension is no longer valid. Currently the area is classified as "moderate" and the State and the area thus have not yet been subject to the requirements for a "serious" area.

The air quality in the BPA area has improved throughout the years. In the early to mid-1990's, the design value hovered around 0.160 ppm, to .150 ppm. Since 1998, the area's design value has fluctuated between 0.134 ppm and 0.145 ppm, correlating to "marginal" and "moderate" classifications. In 2001, only two of the seven monitoring sites showed exceedences of the NAAQS of 0.124 ppm, while in 2002 only one site showed any exceedences. BPA came very close to attaining in 2002, when it experienced exceedences at that one monitoring site, Sabine Pass, the site most directly impacted by emissions from HG. In fact, the Sabine Pass

² Two other United States Circuit Courts of Appeals had previously issued decisions rejecting transport-based attainment date extensions that EPA had granted in other areas. *Sierra Club v. EPA*, 294 F.3d 155 (D.C. Cir. 2002) and *Sierra Club v. EPA*, 311 F.3d 853 (7th Cir. 2002). In the wake of these decisions, EPA issued final rulemakings reclassifying the Washington, DC ozone nonattainment area, 68 FR 3410 (January 24, 2003),

and the St. Louis ozone nonattainment area. 68 FR 4835 (January 30, 2003). (EPA subsequently redesignated the St. Louis area to attainment for the ozone standard 68 FR 25418 and 68 FR 25442 (May 12, 2003).) In addition, in light of the Fifth Circuit's decision on Beaumont, EPA recently issued a final rule withdrawing a transport-based attainment date extension and reclassifying the Baton Rouge ozone nonattainment area. 68 FR 20077 (April 24, 2003).

³ The 8-hour ozone standard value is 0.08 ppm and is the primary and secondary standard. The standard requires that the average of the annual fourth highest daily maximum 8-hour average ozone concentration measured at each monitor over any three-year period, be less than or equal to 0.08 ppm. EPA intends to designate areas under the 8-hour standard by April 15, 2004.