

Atlanta area remained classified as a serious nonattainment area.

EPA cited its July 16, 1998, guidance memorandum entitled "Extension of Attainment Dates for Downwind Areas" which was published in a notice of interpretation on March 25, 1999, (64 FR 14441) as justification for the extension of the attainment date without reclassification. On July 2, 2002, the D.C. Circuit Court, *Sierra Club v. EPA*, 294 F.3d 155, determined that the CAA precluded the attainment date extension policy as a matter of law. The Seventh Circuit, *Sierra Club v. EPA*, 311 F.3d 853 (7th Cir. Nov. 25, 2002), and the Fifth Circuit, *Sierra Club v. EPA*, 314 F.3d 735 (5th Cir. Dec. 11, 2002) subsequently issued opinions that reached the same conclusion with respect to extensions granted to St. Louis, MO and Beaumont, TX¹. In light of the decisions of these circuits, on February 20, 2003, the EPA filed a

motion for voluntary vacatur of its extension of the attainment date deadline for the Atlanta 1-hour ozone nonattainment area and its approval of the Atlanta area 1-hour ozone attainment demonstration SIP. The Eleventh Circuit Court of Appeals granted EPA's request on June 16, 2003, and the Court remanded the matter to EPA for further proceedings consistent with the court's order.

II. Atlanta 1-Hour Ozone Nonattainment Area

The Atlanta 1-hour ozone nonattainment area consists of the following counties: Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, and Rockdale.

III. Explanation of a SIP

Section 110 of the CAA requires states to develop air pollution regulations and

control strategies to ensure that state air quality meets the NAAQS established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. 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.

IV. The NAAQS For Ozone

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 Atlanta area, and it is the classification of the Atlanta area with respect to the 1-hour ozone standard that is addressed in this document.

V. Application of the CAA Provisions Regarding Determinations of Nonattainment and Reclassifications

On December 11, 2001, EPA proposed its finding that the Atlanta area did not attain the 1-hour ozone standard by the applicable date (66 FR 63972). In that notice of proposed rulemaking we discussed how we believed the provisions of section 181(b)(2), the relevant sections of the CAA regarding determinations of attainment and

reclassifications for failure to attain, would apply to the Atlanta area. The proposed finding was based upon ambient ozone concentration data for the period 1997 through 1999, from the monitoring sites in the Atlanta area, several of which recorded an average of more than one exceedance per year.

Section 181(b)(2)(A) of the CAA requires that when EPA determines that an area has not attained the standard by its statutorily required date the area shall be reclassified by operation of law to the higher of:

- (1) The next higher classification for the area, or
- (2) The classification applicable to the area's design value as determined at the time EPA publishes its notice that the area failed to attain.

Even if a serious area's design value at the time of reclassification is lower than the design value for serious areas that serious area cannot be reclassified to a lower classification because the minimum statutory classification resulting from a failure to attain is severe. No area can be reclassified to a category higher than severe. Extreme is the only classification higher than severe, but the statute does not permit reclassification to this level.

The air quality data upon which we made the proposed finding of failure to attain the ozone NAAQS were available for comment in our December 11, 2001, notice of proposed rulemaking. We received no adverse comments pertaining to that air quality data and the proposed determination of nonattainment.

TABLE 2.—AIR QUALITY MONITORING DATA FOR THE ATLANTA AREA 1997–1999

Site ID	County	Total exceedances 97–99	Annual average design expected exceedances	Design value (ppm)
13–089–0002	DeKalb	16	6.7	0.142
13–089–3001	DeKalb	10	4.4	0.135

¹ 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)) and has proposed to do the same for the Beaumont area (68 FR 36756 (June 19, 2003)).