



February 10, 2022

Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Mail Code: 1101A  
Washington, DC 20460

**Re: Notice of Intent to File Suit Over Failure of EPA to Find that Colorado and Utah Have Failed to Attain Ozone Air Quality Standards**

Dear Administrator Regan:

Pursuant to the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(b)(2), WildEarth Guardians hereby notifies you of its intent to file suit against the U.S. Environmental Protection Agency (“EPA”) over the agency’s “failure . . . to perform [an] act or duty under [the Clean Air Act] which is not discretionary with the Administrator.” 42 U.S.C. § 7604(a)(2). As detailed below, EPA has failed to determine whether the Denver Metro-North Front Range region of Colorado, the Uinta Basin of Utah, and the Northern Wasatch Range Utah complied with the 2015 National Ambient Air Quality Standards (“NAAQS”) for ozone by the attainment date of August 4, 2021. If this mandatory duty is not performed within 60 days, we intend to file suit in federal court to compel the EPA to act.

**I. BACKGROUND**

Congress passed the Clean Air Act in order “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b). To meet this goal, EPA is required, among other things, to set NAAQS to protect public health and welfare. *Id.* § 7409.

At issue here is the 2015 ozone NAAQS, which were promulgated by the EPA on October 26, 2015. 80 Fed. Reg. 65,291 (Oct. 26, 2015). Ozone, the key ingredient of smog, is a poisonous gas created when pollution from tailpipes, smokestacks, and oil and gas production in the form of volatile organic compounds (“VOCs”) and nitrogen oxides (“NOx”), reacts with sunlight. *See* EPA, *Ground-level ozone basics*, <https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics>. Ozone poses myriad adverse health and environmental impacts, including respiratory irritation, defoliation of trees and crops, and increased risk of premature death. *Id.*

The 2015 ozone NAAQS revised the standard from 0.075 parts per million over an eight-hour period to 0.070 parts per million. *See* 40 C.F.R. § 50.19. At the time, several monitors in the Denver Metro-North Front Range region were violating the NAAQS and had been violating the NAAQS for years earlier.

Under the Clean Air Act, the EPA was required to designate areas violating the 2015 ozone NAAQS as nonattainment within two years of promulgating the new standard. *See* 42 U.S.C. § 7407(d)(1)(B). Nonattainment designations trigger the deployment of more stringent air quality safeguards and oversight, providing heightened protection for public health.

The EPA did not make nonattainment designations for the 2015 ozone NAAQS until June 2018. *See* 83 Fed. Reg. 25,776 (June 4, 2018). At that time, the Denver Metro Area-North Front Range of Colorado, the Uinta Basin of Utah, and the Northern Wasatch Range of Utah were still violating the 2015 NAAQS and were designated nonattainment, with an effective date of August 4, 2018. These areas were classified as “marginal” nonattainment areas.<sup>1</sup> The Denver Metro-North Front Range nonattainment area encompasses all of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, and Weld Counties, as well as most of Larimer County. *See* 40 C.F.R. § 81.306. The Uinta Basin of Utah encompasses most of Duchesne and Uintah Counties in northeastern Utah. *See* 40 C.F.R. § 81.345. The Northern Wasatch Front nonattainment area includes all of Davis and Salt Lake Counties and portions of Tooele and Weber Counties. *Id.*

Under the Clean Air Act, Colorado and Utah were required to attain the 2015 ozone NAAQS within three years of the effective date of respective nonattainment designations, so by August 4, 2021. *See* 40 C.F.R. § 51.1303(a). Unfortunately, Colorado and Utah both failed to attain the 2015 ozone NAAQS in the Denver Metro-North Front Range, Uinta Basin, and Northern Wasatch Front by that date.

By law, where an ozone nonattainment area fails to attain by the required deadline, the EPA must make a “determination” that the area has failed to attain the NAAQS and reclassify the area to “the next higher classification.” 42 U.S.C. § 7511(b)(2)(A). The agency must make this determination and reclassification “[w]ithin 6 months” after the applicable attainment date. *Id.* Here, even though Colorado and Utah failed to attain the 2015 ozone NAAQS in the Denver Metro-North Front Range, Uinta Basin, and Northern Wasatch Front nonattainment areas by August 4, 2021, the EPA has yet to determine that they failed to attain and has yet to reclassify the nonattainment areas.

Because the Denver Metro Area-North Front Range, Uinta Basin, and Northern Wasatch Front nonattainment areas continue to violate the 2008 ozone NAAQS, the areas should be reclassified from “marginal” to “moderate” nonattainment areas. Under a moderate classification, Colorado and Utah would be required to adopt more stringent air quality

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<sup>1</sup> Ozone nonattainment classifications initially depend on the severity of an area’s ozone violations. *See* 42 U.S.C. § 7511(a)(1). In order from lowest to highest, ozone nonattainment classifications include marginal, moderate, serious, severe, and extreme. *Id.*; *see also* EPA, Implementation of the 2015 NAAQS for Ozone: Nonattainment area classifications approach, 83 Fed. Reg. 10,376 (Mar. 9, 2018).

safeguards, impose stronger permitting requirements, and further limit overall emissions of VOCs and NOx in the areas. 42 U.S.C. § 7511a(d).

## **II. VIOLATION OF THE CLEAN AIR ACT**

By August 4, 2021, Colorado was required to bring the Denver Metro-North Front Range nonattainment area into compliance with the 2015 ozone NAAQS and Utah was required to bring the Uinta Basin and Northern Wasatch Front into compliance with the NAAQS. *See* 42 U.S.C. § 7511(a)(1). EPA was then required to determine whether these areas attained the NAAQS within six months after August 4, 2021 or by February 4, 2022. *Id.* § 7511(b)(2)(A). EPA's determination is a nondiscretionary duty. As of the date of this letter, EPA has yet to make such a determination for the Denver Metro-North Front Range, Uinta Basin, and Northern Wasatch Front ozone nonattainment areas.

The failure of EPA to make its legally required determination is delaying clean air for the Denver Metro-North Front Range region, the Uinta Basin, and the Northern Wasatch Front. If the agency finalized its determination that the area failed to attain, it would “bump up” the classification of the areas from “marginal” to “moderate” as a matter of law. *See id.* § 7511(b)(2)(A)(i). This change in classification would require Colorado and Utah to adopt more stringent clean air safeguards to reduce ozone pollution, to submit a plan to clean up the region's unhealthy air, and set a new deadline for the area to come into attainment with the NAAQS. In essence, EPA's delay is forcing people living in the Denver Metro-North Front Range, Uinta Basin, and Northern Wasatch Front to endure greater air pollution and public health risks.

## **III. WILDEARTH GUARDIANS INTENDS TO FILE SUIT**

In accordance with the citizen suit provision of the Clean Air Act, 42 U.S.C. § 7604(a)(2), WildEarth Guardians intends to file suit in federal court after 60 days if the EPA has not remedied its failure to perform the aforementioned nondiscretionary duty. In keeping with the requirements under 40 C.F.R. § 54.3(a), you are hereby notified that the full name and address of the person giving the notice is as follows:

WildEarth Guardians  
301 N. Guadalupe, Ste. 201  
Santa Fe, New Mexico 87501.

Guardians is an environmental nonprofit dedicated to protecting and restoring the wildlife, wild places, wild rivers, and health of the American West. Guardians has thousands of members in Colorado and Utah and surrounding states who live and recreate in the Denver Metro-North Front Range, Uinta Basin, and Northern Wasatch Front nonattainment areas.

Guardians would prefer to resolve this matter without the need for litigation. Therefore, we look forward to EPA contacting us to resolve this matter.

Sincerely,



Jeremy Nichols  
Climate and Energy Program Director  
WildEarth Guardians  
(303) 437-7663  
[jnichols@wildearthguardians.org](mailto:jnichols@wildearthguardians.org)

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**CERTIFIED MAIL**

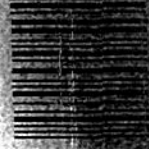


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