

October 15, 2024

Jared Polis
Governor of Colorado
State Capitol Bldg.
200 E Colfax Ave., Rm. 136
Denver, CO 80203

Re: Colorado Needs More Effective Clean Air Tools to Reduce Front Range Smog

Dear Governor Polis:

In spite of efforts to curtail ground-level ozone, the key ingredient of smog, air pollution continues to rise to unhealthy levels in the Denver Metro and North Front Range region, putting more than four million Coloradans at risk. This past summer, monitors recorded dozens of exceedances of ozone health standards, maintaining the region's status as one of the most polluted in the country.¹ Ozone is known to disproportionately impact low income communities and communities of color already besieged by unhealthy air pollution.²

In light of ongoing violations of ozone standards, we urge you to use your authority under the Clean Air Act to secure the strongest and most effective safeguards to clamp down on smog in the Denver Metro-North Front Range region. **We call on you to request the U.S. Environmental Protection Agency (EPA) immediately classify the region an "Extreme" ozone nonattainment area.**

You have the authority to make this request pursuant to 42 U.S.C. § 7511(b)(3). Although EPA will likely have no choice but to make this classification in 2027, we urge you to exercise your authority to compel EPA to act now. This classification will give Colorado the strongest tools possible under the Clean Air Act to confront ground-level ozone, reduce smog, and truly protect people and communities.

The Denver Metro-North Front Range region is already designated a nonattainment, or dirty air, area due to over fifteen years of violating of federal ozone standards. The region is failing to comply with two standards, one adopted in 2008 that limits eight-hour ozone concentrations to no more than 75 parts per billion and one adopted in 2015 that limits eight-hour concentrations to no more than 70 parts per billion. The nonattainment designation has

¹ According to the American Lung Association's 2024 "State of the Air," the Denver Metro Area is the sixth smoggiest metro area United States. See <https://www.lung.org/research/sota/city-rankings/msas/denver-aurora-co#ozone>.

² See e.g., Bravo, M.A., R. Anthopolos, M.L. Bell, M.L. Miranda, "Racial isolation and exposure to airborne particulate matter and ozone in understudied US populations: environmental justice applications of downscaled numerical model output," *Env. Int.*, 2016, 92-93: 247-255.

required the state to adopt stronger plans to curb pollution and reduce ozone, yet it is clear these plans continue to fall short of full compliance.

Under the Clean Air Act, ozone nonattainment areas are classified according to the severity of the problem. The worse the problem, the higher the classification and the more stringent the pollution control requirements.

Due to years of ongoing violations, the Denver Metro-North Front Range region is classified as a “Severe” ozone nonattainment area for the 2008 standard and a “Moderate” nonattainment area for the 2015 standard. However, due to high ozone this summer, the area continues to fail to meet ozone standards and will require more stringent classifications.

If the region does not come into compliance with the 2008 ozone standard by 2027, the EPA will be legally required to classify the region an “Extreme” nonattainment area. Delaying important clean air protections until 2027 undermines important steps to protect public health and the environment. We urge you to call on the EPA reclassify the region now from a “Severe” to an “Extreme” ozone nonattainment area.

Under the Clean Air Act, states have authority to voluntarily request the EPA reclassify ozone nonattainment areas. *See* 42 U.S.C. § 7511(b)(3). Colorado has already exercised this authority and requested the EPA reclassify the Denver Metro-North Front Range region from a “Moderate” to a “Serious” nonattainment area for the 2015 ozone standard.³ The EPA also just approved a request by Texas to reclassify the San Antonio, Dallas-Fort Worth, and Houston-Galveston-Brazoria ozone nonattainment areas from “Moderate” to “Serious” for the 2015 ozone standards. *See* 89 Fed. Reg. 51,289 (June 20, 2024). Further, in 2023, the EPA granted a request by California to reclassify the Coachella Valley ozone nonattainment area from “Severe” to “Extreme” for the 2008 ozone standard. 88 Fed. Reg. 14,291 (March 8, 2023). The EPA must approve any such voluntary reclassification requests.

Just as you used your authority to request the EPA reclassify the “Moderate” nonattainment area to “Serious,” we urge you to further use your authority under the Clean Air Act to seek earlier action from the EPA and enable more aggressive action to confront smog. We call on you to request that the EPA classify the Denver Metro-North Front Range ozone nonattainment area as “Extreme” for both the 2008 and 2015 ozone standards.

Under an “Extreme” classification, the Clean Air Act would require deeper reductions of volatile organic compounds and nitrogen oxides, which are key ozone forming pollutants. The Clean Air Act would provide the state with more authority to limit traffic and motor vehicle emissions. The permitting threshold for major stationary sources of pollution would also be reduced from 25 tons per year to 10 tons per year. This would ensure that more stationary sources

³ In a June 5, 2024 letter, you requested the EPA reclassify the Denver Metro-North Front Range ozone nonattainment area from “Moderate” to “Serious” “as soon as possible.” *See* <https://raqc.egnyte.com/dl/tAocEq8qig>.

of volatile organic compounds and nitrogen oxides are permitted as major sources, leading to the use of the most stringent pollution controls and requirements for polluters to offset emissions and achieve net reductions.

The region already faced an August 3, 2024 deadline to meet the 2015 standards, which we did not meet. Consistent with Colorado's request, the EPA reclassified the region from a "Moderate" nonattainment area to a "Serious" nonattainment area on July 24, 2024. However, we believe it makes more sense to leapfrog this classification and instead simply seek reclassification as an "Extreme" nonattainment area for the 2015 ozone standard.

Given high ozone this year and given the region's ongoing failure to meet the 2015 standard, expediting this classification will give Colorado the strongest tools possible under the Clean Air Act to most efficiently and effectively protect air quality. As you stated in your request that EPA reclassify the Denver Metro-North Front Range ozone nonattainment area from "Moderate" to "Serious":

A proactive reclassification avoids costly and time-consuming analysis and paperwork and provides Colorado more time to devote resources to working with sources on permitting requirements associated with the lower major source threshold and can continue to prioritize comprehensive strategies to achieve our longer term air quality goals.

This year, the numbers paint a grim picture of the state of air quality in the Denver Metro-North Front Range region. 14 monitors are in violation of the 2015 ozone standard and five monitors are violating the 2008 standard. June and July saw unprecedented numbers of air quality alerts due to high ozone. Front Range residents from Douglas County north to Denver and Larimer and Weld Counties have been told to stay indoors, limit driving, and make other sacrifices because of high smog. Our ozone problem is still headed in the wrong direction and it appears that an "Extreme" classification is inevitable.

To come into compliance with the standards, the region will have to achieve unprecedentedly low ozone levels in both 2025 and 2026. While we sincerely hope the region experiences the lowest amount of ozone pollution possible in coming years, it seems unrealistic to believe the region will achieve the exceptionally low ozone levels needed to comply. Although some emission reduction measures have been adopted, the state has yet to utilize the fullest suite of tools available to confront pollution under the Clean Air Act. One air quality official described 2024 as, "not a good first year to have."⁴

During your terms as Governor, you have pledged to aggressively and without delay reduce ozone pollution along Colorado's Front Range. You have acknowledged that clean air is a

⁴ See "Clock is ticking to clean the Front Range's dirty air by 2027. The region's off to a bad start this summer," *The Denver Post* (Aug. 4, 2024), <https://www.denverpost.com/2024/08/04/denver-front-range-colorado-ozone-air-pollution-levels/>.

right that belongs to us all. In furtherance of your commitment to protecting our health, we urge you to request the EPA classify the Denver Metro-North Front Range region as an “Extreme” ozone nonattainment area and give Colorado the tools needed to most aggressively confront smog and protect people.

Sincerely,

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