



September 16, 2020

Colorado Air Quality Control Commission
4300 Cherry Creek Drive South
Denver, CO 80246

Re: Please Deny Request for Rulemaking Hearing, Serious Ozone Nonattainment Area State Implementation Plan

Dear Colorado Air Quality Control Commissioners:

On September 18, Air Pollution Control Division staff intend to request that you set a hearing to adopt a state implementation plan revision to meet serious ozone nonattainment area requirements under the Clean Air Act. WildEarth Guardians urges you to reject this request in order to maintain the credibility of the Air Quality Control Commission and sustain public trust in your efforts to protect clean air and public health in Colorado.

We instead urge you to direct the Division to stop wasting time and resources on ineffective planning and develop an effective suite of air quality regulations that truly reduce ozone precursor emissions and protect clean air and public health in the Denver Metro/North Front Range nonattainment area.

Our primary concern with the Division's request for rulemaking is that it is based on make believe air quality data and an attainment demonstration that is completely untethered from reality. Based on an "attainment demonstration and weight of evidence analysis," the Division asserts the proposed SIP revision will attain the 2008 ozone national ambient air quality standards (NAAQS) by the end of 2020. This is not a truthful conclusion.

For one, this finding of attainment is not based on any modeling data. In fact, the modeling data prepared by the Division shows the Denver Metro/North Front Range nonattainment area will continue to violate the 2008 ozone NAAQS after 2020.

Most importantly, this finding defies real life air quality monitoring data. As of today, at least four monitors in the Denver Metro/North Front Range region remain out of compliance with the 2008 ozone NAAQS. Based on the Division's own monitoring data, the 2018-2020 design value will undoubtedly be above the NAAQS of 75 parts per billion with the Chatfield State Park monitor registering a design value of at least 81 parts per billion. See Table below.

Monitors Violating 2008 Ozone NAAQS Based on 2018-2020 Monitoring Data

Monitor	2018-2020 Design Value (ppb)
Highland	77
Chatfield State Park	81
Rocky Flats North	79
NREL	80

While acknowledging the high ozone levels recorded so far in 2020, the Division asserts to the Commission that “these monitored values should not be considered conclusive.” This is a preposterous assertion as the Division’s monitoring data is widely known to be accurate and informative. It is simply reckless and irresponsible for the Division to ask the Commission to ignore very real 2020 monitoring data.

The Division asserts that it is still “evaluating the impact of the significant amount of wildfires, and other exceptional events, experienced this summer.” It is critical to point out that the occurrence of wildfires does not automatically allow the Division to write off high ozone concentrations. However, even presuming that the Division may ultimately try to write off some of the numerous ozone exceedances recorded in 2020, it would still be highly improbable that the monitors violating the 2008 ozone NAAQS would all come into attainment.

We actually calculated hypothetical design values for the Chatfield State Park, NREL, and Rocky Flats monitors based on monitoring data so far this year. To illustrate how unlikely it is that these monitors will attain, we calculated design values that used the 5th-10th highest values so far in 2020 in place of the 4th highest value.¹ These hypothetical design values confirm that due to numerous days of high ozone so far in 2020, it is impossible for the Chatfield State Park and NREL monitors to attain. As the table below shows, even substituting the 10th max in 2020 for the 4th max, the design values would be 78 and 77 parts per billion at the Chatfield State Park and NREL monitors, respectively.

Hypothetical 2018-2020 Design Values at Key Ozone Monitors Using 2020 5th-10th Max. in Place of 4th Max. Value

Monitor	County	2018-2020 DV 5th Max.)	2018-2020 DV (6th Max.)	2018-2020 DV (7th Max.)	2018-2020 DV (8th Max.)	2018-2020 DV (9th Max.)	2018-2020 DV (10th Max.)
Chatfield State Park	Douglas	80	80	79	79	78	78
NREL	Jefferson	79	79	78	78	78	77
Rocky Flats North	Jefferson	78	78	77	76	76	75

¹ Ozone monitoring data was obtained from the Air Pollution Control Division’s Air Quality Reports website at <https://www.colorado.gov/airquality/report.aspx>.

In fact, a closer look at the monitoring data from the Chatfield State Park, NREL, and Rocky Flats North monitors confirms that these monitors have recorded numerous exceedances of the ozone NAAQS in 2020. Attached to this letter as Attachment A is a table showing the first through eleventh highest 8-hour ozone readings at each monitor. The table shows that the NREL monitor recorded more than 10 days of ozone concentrations above the 2008 ozone NAAQS. The table also confirms that even if one were to hypothetically exclude ozone monitoring data between August 21-27, which is when air quality in the region was heavily impacted by wildfire smoke, the Chatfield, NREL, and Rocky Flats North monitors would all still be in violation of the 2008 ozone NAAQS.

Rather than rely on modeling or monitoring data, the Division instead relies on a “weight of evidence analysis” to assert that after 2020, the region will be in attainment of the 2008 ozone NAAQS. The Division frequently relies on a “weight of evidence analysis” to talk its way out of air quality problems that have been confirmed by actual air quality monitoring and/or modeling. The Division previously relied on a “weight of evidence analysis” in asserting the Denver Metro/North Front Range region would attain the 2008 ozone NAAQS by 2017. The region did not attain by 2017. Instead, the region has continued to violate and in 2019, was bumped up from a moderate to a serious ozone nonattainment area. Now the Division is playing the same tired trick in an attempt to speciously claim the region will attain by 2020.

In the face of actual monitoring data confirming ongoing violations of the 2008 ozone NAAQS in the Denver Metro/North Front Range nonattainment area, it is disheartening that the Division would once again play games with the region’s air quality. It would be even more disheartening if the Air Quality Control Commission went along with the Division’s attempted sleight of hand.

To this end, we implore the Commission to put reality, health, and clean air first, and reject the Division’s request to set a hearing. We instead urge the Commission to direct the Division to develop a meaningful package of measures that both meet Clean Air Act state implementation planning requirements and actually ensure attainment of the 2008 ozone NAAQS.

In doing so, the Commission will uphold the rule of truth and facts in air quality regulation and maintain public trust in your actions. Additionally, you will save valuable time, energy, and resources that would otherwise be wasted on a rulemaking process and state implementation plan submission that will ultimately prove ineffective.

Under the Clean Air Act, Colorado must demonstrate attainment with the 2008 ozone NAAQS in the Denver Metro/North Front Range serious nonattainment area by July 20, 2021.² If the state fails to attain by this date, the region will be reclassified as a “severe” nonattainment area and the Colorado state implementation plan will have to be revised to meet severe nonattainment planning requirements.

² See 84 Federal Register 44,238, 44,248 (Aug. 23, 2019).

Based on actual air quality monitoring data so far in 2020, we know it is inevitable that the Denver Metro/North Front Range region will not attain the 2008 ozone NAAQS by July 20, 2021. To this end, we know it is inevitable that the region will be reclassified as a “severe” ozone nonattainment area. Given this, it just makes sense for the Division and the Commission to focus on developing a state implementation plan revision that truly brings the region into attainment with the 2008 ozone NAAQS, meets the severe planning requirements under the Clean Air Act, and fully protects public health.

If the Commission rejects the Division’s request for rulemaking there will be no downsides or consequences.

The Division has already missed an August 3, 2020 deadline to submit a state implementation plan revision to meet serious ozone nonattainment area planning requirements under the Clean Air Act.³ This means the Division is already way behind in meeting serious nonattainment area Clean Air Act planning requirements and is better off focusing on meeting planning requirements for severe ozone nonattainment areas.

Furthermore, any emission reductions that would result from the proposed state implementation plan revision would not be realized until the summer of 2021. There is no urgency to adopt these or other emission reductions by December 2020. Given that ozone pollution in the Denver Metro/North Front Range region typically does not become a problem until April or May, there is time to develop a more comprehensive and effective set of regulations to reduce ozone precursor emissions and attain the 2008 ozone NAAQS.

Governor Jared Polis has already signaled his support for such an approach to confronting ozone pollution in the Denver Metro/North Front Range nonattainment area. In 2019, the Governor withdrew a request for an extension of the attainment deadline for the ozone nonattainment area, stating, “There’s too much smog in our air, and instead of hiding behind bureaucracy and paperwork that delay action, we are moving forward to make our air cleaner now.”⁴

Consistent with Governor Polis, we call on the Commission to reject the Division’s attempts to use bureaucracy and paperwork to delay action. Instead, we call on the Commission to move forward to achieve clean air for everyone living in the Denver Metro/North Front Range region.

We greatly appreciate the Commission’s time and attention to this critical matter. Given the public health implications of high ozone pollution in the Denver Metro/North Front Range region, it is critical the Commission ensure the Air Pollution Control Division acts

³ See 84 Federal Register 44,238, 44,245 (Aug. 23, 2019).

⁴ See Governor’s Statement at <http://coloradogovernor.migrate.acquia.com/governor/news/effort-improve-air-quality-colorado-withdraw-extension-request-national-air-standard-compliance>.

responsibly and as effectively as possible to clean up Colorado's dangerous air pollution problems. Thank you.

Sincerely,



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First through eleventh max. 8-hour ozone values recorded at Chatfield State Park, NREL, and Rocky Flats North monitors so far in 2020. Values highlighted orange indicate readings that occurred during the August 21-27 wildfire smoke event in the Denver Metro/North Front Range region. Even if these values are excluded, all three monitors would continue to be in violation of the 2008 ozone NAAQS. Data obtained from the Air Division's Air Quality Reports website, <https://www.colorado.gov/airquality/report.aspx>.

Monitor	County	1 st Max.	Date	2 nd Max.	Date	3 rd Max.	Date	4 th Max.	Date	5 th Max.	Date	6 th Max.	Date	7 th Max	Date	8 th Max	Date	9 th Max.	Date	10 th Max.	Date	11 th Max.	Date
Chatfield State Park	Douglas	89	8/23	89	8/21	88	8/22	83	8/26	81	8/24	81	8/25	76	8/4	76	8/17	75	8/27	74	8/10	73	8/3
NREL	Jefferson	90	8/21	90	8/23	88	8/22	87	8/25	84	6/17	82	8/24	81	7/10	81	8/17	80	8/26	78	6/15	78	7/11
Rocky Flats North	Jefferson	89	8/23	86	8/21	84	6/17	84	7/10	83	8/22	82	8/24	78	8/13	76	8/8	76	8/17	74	7/21	73	6/15