

# TOPIC TITLE: DENVER METRO NORTH FRONT RANGE AREA OZONE PLANNING

*Division: Air and Radiation Division*

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## ISSUE SUMMARY

- The Denver Metro/North Front Range (DMNFR) area is currently designated nonattainment and is classified as a Severe nonattainment area for the 2008 ozone National Ambient Air Quality Standard (NAAQS) and Serious for the 2015 ozone NAAQS.
- The DMNFR area 2022-2024 preliminary three-year average design value is 81 parts per billion (ppb). The 2015 ozone standard is 70 ppb and the 2008 ozone standard is 75 ppb.
- In 2024, Colorado requested, and EPA granted, a voluntary reclassification of the DMNFR nonattainment area for the 2015 ozone NAAQS from Moderate to Serious nonattainment.
- The DMNFR area must now attain the 2008 and 2015 ozone NAAQS by July 20, 2027, and August 3, 2027, respectively.

## KEY POINTS

- On September 12, 2022, and September 19, 2022, The Center for Biological Diversity (CBD) and WildEarth Guardians filed complaints against the EPA for not finalizing action on Colorado's 2008 ozone Serious attainment plan by June 2, 2021. We negotiated a consent decree (and subsequent agreed extensions) requiring EPA to take final action on all Serious attainment plan elements by December 2023. We approved the majority of the Serious attainment plan on May 9, 2023, but finalized disapprovals of rules lacking sufficient reporting requirements, contingency measures, and certain reasonably available control technology (RACT) determinations on May 9, 2023, November 7, 2023, and December 8, 2023. The disapprovals started the statutory clocks for new source review sanctions, highway sanctions, and issuance of a federal implementation plan (FIP).
- On October 7, 2022, EPA finalized the reclassification of the DMNFR area, resulting in a "bump-up" to a Severe nonattainment classification under the 2008 NAAQS. A Severe classification means that Colorado must meet additional Clean Air Act (CAA) requirements. Notably, the threshold for major sources drops from 50 tons per year of nitrogen oxides and/or volatile organic compounds to 25 tons per year. This means many sources throughout the DMNFR area are considered major sources and are in the process of obtaining new permits and meeting RACT requirements. Reformulated gasoline with a lower vapor pressure was also required to be sold in the DMNFR area by June 1, 2024. The state must also develop a CAA section 185 fee program for major sources in the event that the nonattainment area for the 2008 ozone NAAQS fails to attain by the July 20, 2027 deadline.
- Colorado requested that the area be voluntarily reclassified to Serious nonattainment, which EPA granted effective July 24, 2024. The voluntary reclassification relieved the state of some of the Moderate area planning requirements, including the modeled attainment demonstration and attainment-related contingency measures. EPA is still obligated to act on the remaining

Moderate area planning requirements which Colorado submitted in spring 2023. The attainment plan for the now Serious DMNFR nonattainment area for the 2015 ozone NAAQS is due January 1, 2026.

## ONGOING/UPCOMING REVIEWS FOR FY25

- On May 3, 2024, to correct the deficiencies identified in our May 9, 2023 rulemaking, Colorado submitted a letter to EPA committing to undertake additional steps to improve public access to regulatory compliance information and clarifying existing state implementation plan (SIP) reporting requirements. On August 6, 2024, we proposed conditional approval relating to the insufficient reporting requirements contingent upon the state adopting additional revisions. We issued a concurrent interim final determination rulemaking, which stopped the sanctions and FIP clocks associated with the May 9, 2023 disapproval. At a December 2024 state rulemaking, Colorado will make additional revisions relating to the disapprovals of reporting requirements, contingency measures and RACT determinations for the 2008 ozone Serious attainment plan. We anticipate that those revisions will be submitted to EPA in spring 2025. Colorado had filed a 10<sup>th</sup> Circuit petition for review of the disapproval portions of the May 9, 2023 rule, but that litigation is being held in abeyance.
- On July 10, 2023, the CBD and 350 Colorado filed a petition for review in the 10<sup>th</sup> Circuit Court of Appeals, challenging our approval of certain elements of Colorado's Serious ozone attainment plan in our May 9, 2023 rulemaking. The briefs for this case have been filed, oral arguments were held, and we are awaiting a decision.
- On July 5, 2023, Colorado withdrew the attainment and reasonably available control measures demonstrations for the 2008 ozone Serious attainment plan because the area had already been bumped up to Severe. On December 14, 2023, CBD filed a motion to enforce the consent decree because of the withdrawal. The court denied CBD's motion to enforce the consent decree on January 23, 2024. CBD filed its notice of appeal with the 9<sup>th</sup> Circuit Court on March 25, 2024. On April 4, 2024, CBD filed a motion to stay its appeal, stating that it intends to bring a new action in district court to make EPA act on the withdrawn items. The 9<sup>th</sup> Circuit Court granted the stay. CBD intends to bring the action to district court in December 2024.
- 2008 ozone Severe attainment plans were due on May 7, 2024. Colorado submitted certain pieces of the Severe attainment plan in spring 2023. The remaining parts of the Severe submission were provided to EPA in spring 2024.

## REGION 8 LEADS AND KEY HQ CONTACTS

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## KEY EXTERNAL STAKEHOLDERS

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| <input type="checkbox"/> Congress             | <input checked="" type="checkbox"/> Industry | <input checked="" type="checkbox"/> States            | <input type="checkbox"/> Tribes            | <input checked="" type="checkbox"/> Media |
| <input type="checkbox"/> Other Federal Agency | <input checked="" type="checkbox"/> NGO      | <input checked="" type="checkbox"/> Local Governments | <input checked="" type="checkbox"/> Public |   |

## MOVING FORWARD

- EPA will review and take action on Colorado 2008 ozone Severe and 2015 ozone Moderate attainment plans.
- Continue to work with Colorado to resolve issues with SIP revisions disapproved in the 2023 rulemakings, including initiating new rulemakings once the state makes subsequent submissions related to disapproved SIP revisions.
- Engage with Colorado on the development of the 2015 ozone Serious attainment plan.