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Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

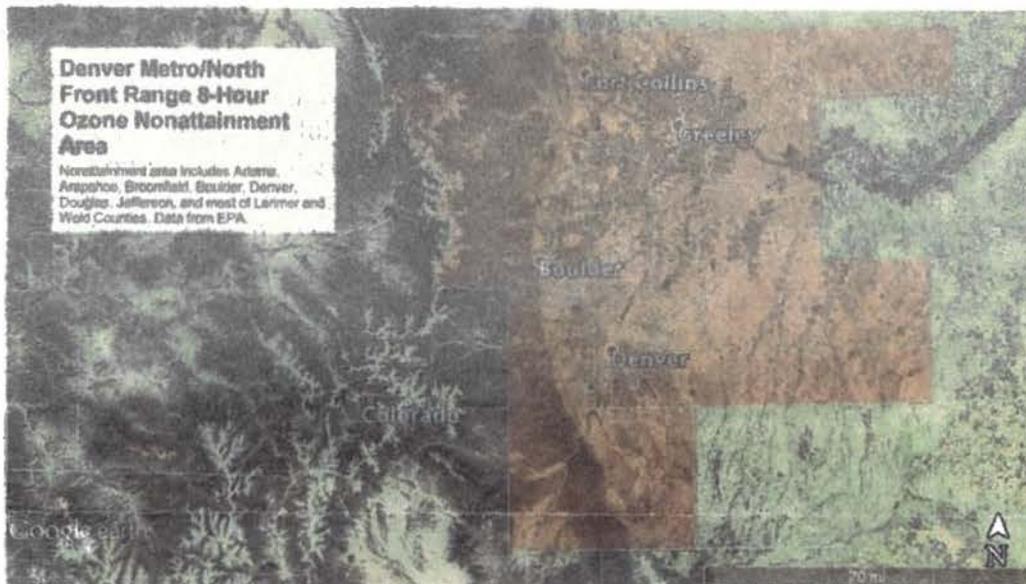
Re: Failure to Find that the Denver Metro/North Front Range Ozone Area Failed to Attain National Ambient Air Quality Standards for Ozone

Dear Administrator McCarthy:

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). Specifically, the EPA has failed to determine that the Denver Metropolitan/North Front Range area of Colorado failed to attain the 2008 ozone National Ambient Air Quality Standards ("NAAQS") by the attainment date of July 20, 2015. If the aforementioned duty is not performed within 60 days, we intend to file suit in federal court to compel the EPA to act, as provided for by the citizen suit provision of the Clean Air Act.

BACKGROUND

The Denver Metropolitan/North Front Range region of Colorado was designated as nonattainment, effective July 20, 2012, after the region violated the 2008 ozone NAAQS, which were established to protect public health. See 40 C.F.R. § 81.306. The nonattainment area includes the entirety of the counties of Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson, and portions of the counties of Larimer and Weld. See 40 CFR § 81.306; see also figure below. The region was classified as a "marginal" nonattainment area under the Clean Air Act.



Denver Metropolitan/North Front Range 8-hour Ozone NAAQS Nonattainment Area.

Ozone forms when sunlight reacts with two key air pollutants—volatile organic compounds (“VOCs”) and nitrogen oxides (“NOx”), referred to as ozone precursors. Ozone is the key ingredient of smog and poses serious health risks. The 2008 NAAQS limit ozone concentrations in the air to no more than 0.075 parts per million (“ppm”) (also expressed as 75 parts per billion (“ppb”)) on an eight hour basis, although the EPA has finalized a new ozone NAAQS, limiting concentrations to no more than 0.070 ppm over an eight hour period. *See* 80 Fed. Reg. 65,292 (Oct. 26, 2015).

The State of Colorado was required to bring the Denver Metro/North Front Range marginal nonattainment area into compliance with the 2008 ozone NAAQS within three years after the effective date of designation, or by July 20, 2015. *See* 80 Fed. Reg. 12,264, 12,313 (March 6, 2015). Within the nonattainment area, however, ozone concentrations have consistently violated the 2008 NAAQS since 2012. A violation occurs at a monitoring site when the three-year average of the annual fourth highest eight-hour ozone concentration exceeds 0.075 ppm, or 75 ppb. *See* 40 C.F.R. § 50.15(b).

In August of 2015, the EPA proposed to find that the Denver Metro/North Front Range nonattainment area had failed to attain the NAAQS by July 20, 2015. *See* 80 Fed. Reg. 51,992 (Aug. 27, 2015). The EPA has not yet finalized this finding.

VIOLATION OF THE CLEAN AIR ACT

Under the Clean Air Act, the EPA is required to determine whether an ozone nonattainment area has complied with the NAAQS within six months following the applicable attainment date. *See* 42 U.S.C. § 7511(b)(2)(A). This is a nondiscretionary duty. If an area is found to have not attained the NAAQS, its classification is “bumped up” to a higher

classification as a matter of law. *See id.* at § 7511(b)(2)(A)(i).¹

The Denver Metro/North Front Range marginal ozone nonattainment area was required to attain the ozone NAAQS by July 20, 2015. Pursuant to the Clean Air Act, EPA was therefore required to determine whether the area attained the NAAQS by January 20, 2016. As of the date of this letter, the EPA has yet to make such a determination. Although the agency proposed in August of 2015 to find that the Denver Metro/North Front Range nonattainment area failed to attain the NAAQS, this finding has yet to be finalized.

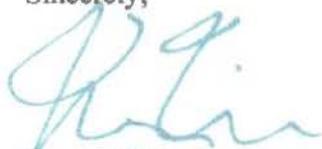
The failure of the EPA to make its legally required determination is delaying clean air for the Denver Metro/North Front Range region. If the agency finalized its determination that the area failed to attain, it would “bump up” the classification of the area from “marginal” to “moderate” as a matter of law. This change in classification would require the State of Colorado 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. EPA’s delay is effectively forcing the Denver Metro/North Front Range region to endure greater air pollution and public health risks.

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 of federal regulations, you are hereby notified that the full name and address of the person giving the notice is WildEarth Guardians, 516 Alto St., Santa Fe, NM 87501. For purposes of discussing this matter, please contact us at the information below.

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

Sincerely,



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¹ 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* 80 Fed. Reg. 12,264, 12,313 (March 6, 2015).