

No. 25-9507 (related to Nos. 25-9508, 25-9513, & 25-9525)

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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UTAH PETROLEUM ASSOCIATION,

*Petitioner,*

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, and  
LEE ZELDIN, in his official capacity as Administrator  
of the U.S. Environmental Protection Agency,

*Respondents.*

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On Petition for Review of a Final Rule of the  
U.S. Environmental Protection Agency

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**MOTION TO INTERVENE IN SUPPORT OF RESPONDENTS**

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## INTRODUCTION

Movants the Center for Biological Diversity, Utah Physicians for a Healthy Environment, and Living Rivers (together, “Public Interest Groups”) respectfully request leave to intervene in Case No. 25-9507 under Federal Rule of Appellate Procedure 15(d) and 10th Cir. R. 15.4. The Public Interest Groups request leave to intervene in support of Respondents U.S. Environmental Protection Agency and Administrator Lee Zeldin (“EPA”) to defend EPA’s decisions that (1) the Uinta Basin, Utah, nonattainment area failed to attain the health-based ozone standards, and (2) the area’s attainment deadline should not be extended for a second time. 89 Fed. Reg. 101,483 (Dec. 16, 2024) (“Rule”).

The Public Interest Groups are non-profit public health and environmental organizations whose members’ health and welfare are threatened by ozone pollution in the Uinta Basin nonattainment area. The Public Interest Groups have ongoing interests in protecting clean air, proper regulation of oil and gas industry pollution, and the full implementation and enforcement of the Clean Air Act. In furtherance of these interests, the Public Interest Groups have long advocated for the State of Utah (“Utah”) and EPA to fix the ozone problem in the Uinta Basin, including through better regulation of the oil and gas industry.

The Basin faces a chronic ozone problem. Any delay or nullification of EPA’s decision in this case will postpone or eliminate the more stringent pollution

control requirements the Clean Air Act imposes on areas like the Basin that fail to attain the ozone National Ambient Air Quality Standards (“NAAQS”) by their deadline. This delay or nullification will result in excess illegal ozone pollution that harms the public health and the environment.

The Public Interest Groups and their members form part of the public that EPA’s decision is meant to aid; have extensive experience in working for improved air quality and better regulation of the oil and gas industry; and have distinct interests in this litigation that will not be adequately protected by existing parties. For these reasons, discussed further below, the Public Interest Groups should be permitted leave to intervene in this matter.

Pursuant to 10th Cir. R. 27.1, Petitioner Utah Petroleum Association (“UPA”) has stated that it will oppose this motion. EPA takes no position on the motion but reserves its right to file a response.

The Public Interest Groups will also move to intervene in the three related cases that stem from the same final agency action, via separate motions filed in each appeal.<sup>1</sup>

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<sup>1</sup> The related cases are *State of Utah, et al., v. EPA*, No. 25-9508; *Seven County Infrastructure Coalition, et al., v. EPA*, No. 25-9513; and *Ute Indian Tribe of the Uintah and Ouray v. EPA*, No. 25-9525.

## FACTUAL AND LEGAL BACKGROUND

### **I. Ozone pollution harms human health and the environment.**

Ozone pollution is dangerous. Exposure to ground-level ozone, also known as smog, can impair breathing, cause and aggravate asthma, increase emergency room visits, and lead to premature death. 80 Fed. Reg. 65,292, 65,322 (Oct. 26, 2015). Ozone-induced health problems can force people to change their ordinary activities, requiring them to stay indoors, take medication, and miss work or school.<sup>2</sup>

Ozone can harm healthy adults, but others are even more vulnerable. *Id.* Children, the elderly, and people with respiratory conditions like asthma are most at risk from exposure to ozone pollution. *Id.* Scientific evidence also suggests a causal relationship between exposure to ozone and adverse reproductive and developmental effects, including adverse birth outcomes. *Id.* at 65,338.

### **II. The Clean Air Act requires states and EPA to reduce ozone pollution to healthy levels.**

In furtherance of the Clean Air Act's general purpose to "protect and enhance the nation's air resources, in order to promote the public health," 42

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<sup>2</sup> See, e.g., EPA, Policy Assessment for the Review of the Ozone National Ambient Air Quality Standards, Dkt. No. EPA-HQOAR- 2008-0699-0404, at 3-18, 3-26 to -29, 3-32 to -35 (Aug. 2014).

U.S.C. § 7401(a)(1), Congress directed EPA to issue NAAQS for ozone that are “requisite to protect the public health” “with an adequate margin of safety.” *Id.* § 7409(b)(1).

After EPA promulgates or revises a NAAQS, it must identify which areas of the country are in compliance with the NAAQS and which are not. *Id.* § 7407(d). Areas where air quality fails to meet the NAAQS are designated as “non-attainment” areas. *Id.* The Clean Air Act requires a state with a nonattainment area to develop a State Implementation Plan (“SIP”) that fixes the causes of the area’s nonattainment, including reducing emissions from sources of pollution. *Id.* §§ 7502, 7503, 7511a.

An ozone nonattainment area can be classified as a marginal, moderate, serious, severe, or extreme nonattainment area. *Id.* § 7511(a)(1). Areas typically start as marginal. Each classification comes with a specific attainment deadline by which the area must attain the NAAQS. Marginal areas must attain within three years of the area being designated nonattainment, and moderate areas within six years. *Id.* § 7511(a)(1).

No later than six months after an area’s attainment deadline, EPA must determine whether the area attained the NAAQS or not. *Id.* § 7511(b)(2)(A). Each time EPA determines that a nonattainment area failed to attain the ozone NAAQS

by its attainment deadline, the area is reclassified by operation of law to a worse classification (*e.g.*, from a “marginal” to a “moderate” classification). *Id.*

Because the state’s prior SIP failed to achieve attainment in this circumstance, the Clean Air Act requires the state to submit a new SIP with stricter pollution requirements to EPA for approval. *Id.* §§ 7502, 7503, 7511a. Marginal nonattainment areas are subject to significantly weaker pollution control requirements than moderate areas under the Clean Air Act. 42 U.S.C. § 7511a(a), (b). That is because most of the Act’s most effective requirements for nonattainment areas only kick in with a moderate (or worse) classification.<sup>3</sup> *Id.*

At the request of the state, EPA can extend an area’s attainment deadline by one year if specific statutory criteria are met. *Id.* § 7511(a)(5). EPA can extend the attainment deadline a second time, also for one year, but cannot issue additional extensions. *Id.*

### **III. The Uinta Basin area has a chronic ozone problem.**

EPA has designated a large portion of the Uinta Basin in eastern Utah, including the majority of Uintah County and a large swath of Duchesne County, an

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<sup>3</sup> These additional requirements include, *e.g.*, stronger permitting rules; emissions limits on certain sources of pollution; and a requirement that sources offset their new pollution by reducing pollution from other sources. 42 U.S.C. § 7511a(b)(1)–(5).

ozone nonattainment area because the area has unhealthy levels of ozone pollution that exceed the health-based ozone NAAQS. 83 Fed. Reg. 25,776 (June 4, 2018) (designation decision); 40 C.F.R. § 81.345.

Oil and gas production is one of the most significant causes of this ozone problem. As EPA described in its proposed rule in the rulemaking below, “in the Uinta Basin violating ozone concentrations are driven by stagnant winter conditions associated with snow cover and strong temperature inversions, which directly result **in increased ozone production due to accumulated local ozone precursor emissions from oil and gas sources** in the Basin.” 89 Fed. Reg. 25,223, 25,226–27 (Apr. 10, 2024) (emphasis added).

Air quality in the Uinta Basin is as bad as ever. Because snow cover and strong temperature inversions are unpredictable and uncontrollable, the ozone problem is worse some years than others. Rule at 101,485. For example, the most recent year for which final data is available, 2023, was one of the worst ozone years on record. *Id.* (EPA stating that it “recognize[s] the importance and significance of the high ozone levels recorded in 2023”); *see* Comment Submitted by Center for Biological Diversity, Dkt. No. EPA-R08-OAR-2024-0001-0016, at 1 (Exhibit 1).

Attainment of the ozone NAAQS is based on air monitoring data from the three full years that precede the attainment date. *Id.* at 101,486. For example, the

Uinta Basin area did not attain by its August 3, 2022 attainment deadline because monitoring data from 2019 to 2021 showed violations of the NAAQS. *Id.* at 101,487.

Only **one of the last ten** three-year periods of data show that the Uinta Basin is not violating the ozone NAAQS. Ex. 1 at 4–5; EPA Response to Comments, Dkt. No. EPA-R08-OAR-2024-0001-0023, at 9–13 (Dec. 16, 2024) (Exhibit 2). This single period could be improperly construed to reflect attainment resulted from an anomalous circumstance of unusual weather conditions, rather than from an effective SIP or other regulation of the underlying causes of the problem. Rule at 101,485. A second extension would allow Utah to take advantage of this outlier data period to claim attainment, despite ozone violations occurring in the following two periods.

### **PROCEDURAL BACKGROUND**

Effective August 3, 2018, EPA designated the Uinta Basin area a marginal nonattainment area for the 2015 ozone NAAQS, meaning the original deadline by which the area needed to attain was August 3, 2021, three years after the original nonattainment designation. 83 Fed. Reg. 25,776 (June 4, 2018); 40 C.F.R. § 81.345.

On October 7, 2022, EPA determined that the Uinta Basin area failed to attain the NAAQS by this marginal attainment deadline. 87 Fed. Reg. 60,897. But EPA granted the Uinta Basin a one-year extension of the attainment date, so it remained a marginal area despite its failure to attain. *Id.*

The Uinta Basin area then failed to attain by the new, extended attainment deadline of August 3, 2022. Rule at 101,487. The State of Utah and the Ute Indian Tribe requested a second extension of the attainment deadline, to August 3, 2023. *Id.* at 101,484.

As discussed above, this extension would allow Utah to claim attainment based on one outlier dataset, where the remaining nine datasets show persistent nonattainment.

On April 10, 2024, EPA proposed to grant the requests for a second extension and to determine that the area attained based on the one errant dataset, but requested comment on the propriety of its proposed action. 89 Fed. Reg. 25,223. The Center for Biological Diversity (“Center”) submitted timely comments on the proposed rule on May 10, 2024, raising several concerns with, *inter alia*, chronic exceedances of the NAAQS in the Uinta Basin area, Utah’s deficient application for an extension, and fundamental legal flaws in EPA’s proposal to issue a second extension. Ex. 1.

EPA published the Rule at issue in this appeal on December 16, 2024. In the final rule, EPA determined that a second extension was not warranted, stating: “We are denying this extension after evaluating and considering the public comments received and carefully reviewing the area’s air quality data.” Rule at 101,485. The Center’s comments, in part, and additional scrutiny of the data, which these comments encouraged, led EPA to deny the extension. *Id.*; Ex. 2 at 9–13 (stating, for example, “we agree with the commenters’ general point that EPA should not grant the second extension . . . we generally agree with these commenters as to the significance of the 2023 ozone levels, and how they should affect EPA’s exercise of discretion here.”).

UPA filed its petition for review with this Court on January 21, 2025, initiating this direct appeal, Case No. 25-9507.

## **ARGUMENT**

Under Federal Rule of Appellate Procedure 15(d), a party seeking to intervene in a petition for review proceeding in this Court must file a motion that contains “a concise statement of the interest of the moving party and the grounds for intervention.” 10th Circuit Rule 15.4(B)(1) further requires that the “motion must state the reasons why the parties cannot adequately protect the interest asserted.”

Additionally, because the appellate and Tenth Circuit rules do not provide other standards for intervention, circuit courts often look to the standards governing intervention in the district courts under Federal Rule of Civil Procedure 24. *See Western Energy Alliance v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017). Here, the Public Interest Groups satisfy the standards for both intervention as-of-right and, in the alternative, permissive intervention.

**I. The Public Interest Groups are entitled to intervene as-of-right.**

A movant is entitled to intervention as-of-right under Federal Rule of Civil Procedure 24(a)(2) when: (1) its motion is timely; (2) the movant has an interest relating to the subject of the action; (3) disposition of the action may, as a practical matter, impair or impede the movant’s ability to protect that interest; and (4) the existing parties may not adequately represent the movant’s interest. *See Western Energy Alliance*, 877 F.3d at 1164.

The Tenth Circuit follows a “somewhat liberal line in allowing intervention.” *Utah Ass’n of Counties v. Clinton*, 255 F.3d 1246, 1249 (10th Cir. 2001) (citation omitted). A potential intervenor must claim an interest that “could be adversely affected by the litigation,” but “practical judgment,” and not a “rigid formula,” must be applied. *San Juan County v. United States*, 503 F.3d 1163, 1199

(10th Cir. 2007) (en banc) (finding it “indisputable that [environmental organization’s] environmental concern is a legally protectable interest.”).

Further, both the “impairment” and “inadequate representation” elements “present[] a minimal burden.” *WildEarth Guardians v. NPS*, 604 F.3d 1192, 1199-1200 (10th Cir. 2010).

The Public Interest Groups readily satisfy each of the elements required for intervention as-of-right. Granting leave to intervene here would be consistent with prior rulings of this Court and other circuits in similar cases where public health and environmental citizen groups intervened to defend EPA’s Clean Air Act actions from state and industry challenges.<sup>4</sup>

**A. The motion is timely.**

The Public Interest Groups’ motion for leave to intervene is timely because it was filed “within 30 days after the petition for review [wa]s filed.” Fed. R. App. P. 15(d). The petition for review in this litigation was filed on January 21, 2025.

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<sup>4</sup> See, e.g., Order, *Colorado v. EPA*, No. 23-9566 (10th Cir. Aug. 10, 2023) (intervention granted to Center for Biological Diversity to defend EPA’s disapproval of Colorado’s ozone SIP); Order, *EME Homer City Generation L.P. v. EPA*, No. 11-1302 (and consolidated cases) (D.C. Cir. Oct. 12, 2011) (intervention granted in challenge to the Cross-State Air Pollution Rule); *Texas v. EPA*, 690 F.3d 670 (5th Cir. 2012) (intervention granted in challenge to EPA disapproval of a state Clean Air Act plan); *Nebraska v. EPA*, No. 12-3084, 2016 WL 403655 (8th Cir. Feb. 3, 2016) (intervention granted in challenge to Nebraska regional haze plan); *NPCA v. EPA*, 788 F.3d 1134 (9th Cir. 2015) (intervention granted in challenge to Montana regional haze plan).

Accordingly, the 30-day period to move for leave to intervene expires after February 20, 2025, the date the Public Interest Groups filed this motion.

**B. The Public Interest Groups have significant interests at stake in this litigation that may be impaired without intervention.**

The Public Interest Groups and their members have at least three direct, substantial, and legally protected interests that will be impaired if the disapproval action is reversed and/or delayed. The Public Interest Groups therefore have an “interest relating to the . . . subject of the action.” *See* Fed. R. Civ. P. 24(a)(2); Fed. R. App. P. 15(d). Further, “disposition of the action may, as a practical matter, impair or impede the [Public Interest Groups’] ability to protect” their interests. *See Western Energy Alliance*, 877 F.3d at 1164. If UPA were to succeed in staying, otherwise delaying, or undoing EPA’s action, the health and welfare benefits to the Public Interest Groups’ members of an adequate revised plan would be eliminated or delayed, thereby harming their interests.

“To satisfy [the impairment] element of the intervention test, a would-be intervenor must show only that impairment of its substantial legal interest **is possible** if intervention is denied. **This burden is minimal.**” *WildEarth Guardians v. USFS*, 573 F.3d 992, 995 (10th Cir. 2009) (quotations omitted) (emphasis added); *see Foster v. Gueory*, 655 F.2d 1319, 1325 (D.C. Cir. 1981) (observing that a “possibility” of impairment is a “sufficient showing” for intervention).

*First*, the Public Interest Groups and their members have an interest in EPA’s denial of the extension and finding of nonattainment that will be impaired by an adverse decision in this appeal or delay from staying the decision because ozone pollution in the Uinta Basin harms and/or threatens their members’ health, welfare, recreational, and aesthetic interests.<sup>5</sup>

For example, Living Rivers and Center member John Weisheit is a long-time rafter, hiker, biker, backpacker, and camper on lands in the Uinta Basin area, who regularly visits the area and intends to continue doing so. Weisheit Decl. ¶¶ 6, 11–14. Mr. Weisheit is aware of the health and environmental harms of ozone pollution in the area and has witnessed the deterioration of air quality in the area over decades, including in the form of visible haze and smog. *Id.* ¶¶ 7, 16–20. The excess pollution that would result from delay or reversal of EPA’s decision threatens Mr. Weisheit’s health and will diminish his enjoyment of the recreational and aesthetic qualities of the area, harming these interests. *Id.* ¶¶ 6–9, 17–19, 20.

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<sup>5</sup> The Public Interest Groups have piggyback standing because they are pursuing the same form of relief as EPA by all present indications. *Kane Cnty. v. United States*, 94 F.4th 1017, 1032 (10th Cir. 2024). But even if not, the Public Interest Groups have representational standing because, as discussed herein, these members would suffer injuries if EPA’s decision is delayed or reversed by the Court, the interests are germane to the organizations’ purposes, and individual members need not participate in the lawsuit. *Friends of the Earth v. Laidlaw Env’tl. Servs.*, 528 U.S. 180–181 (2000).

Jeremy Nichols, a long-standing member of Utah Physicians for a Healthy Environment and the Center, also regularly frequents the Uinta Basin nonattainment area to hike, view wildlife, enjoy the natural scenery, and rockhound. Nichols Decl. ¶¶ 8–10. He intends to continue returning to the area in pursuit of these interests. *Id.* ¶¶ 9–10. Mr. Nichols experiences harms from ozone pollution, including noxious sights and smells, which he has seen increase over time and have impaired his health, and recreational and aesthetic experiences. *Id.* ¶ 11. Mr. Nichols’ pursuit of these activities has been impaired, including to the point of interfering with his ability to visit certain places, due to his health and safety concerns. *Id.* EPA’s decision has mitigated those harms, and a decision against petitioners would protect against further harm to his interests. *Id.* ¶ 18.

Without EPA’s denial of the second extension and finding of failure to attain, the Uinta Basin will improperly remain a marginal nonattainment area and may be redesignated to attainment, despite a chronic history of violating the ozone NAAQS that shows no signs of abating. Marginal nonattainment areas are subject to much weaker requirements to control pollution than moderate areas. 42 U.S.C. §§ 7502, 7503, 7511a. The weaker classification will deprive the Public Interest Groups’ members of the pollution reductions, and the associated health and welfare benefits, that the Clean Air Act entitles them to, through a stricter, improved moderate SIP.

*Second*, as organizations dedicated to protecting public health and the environment, the Public Interest Groups have an interest in ensuring that the Clean Air Act is properly implemented. Nichols Decl. ¶¶ 3–4, 6; Weisheit Decl. ¶¶ 3–4. “[C]oncern for enforcing the statutory scheme” can provide grounds for intervention. *Ceres Gulf v. Cooper*, 957 F.2d 1199, 1204 (5th Cir. 1992); *Utah Ass’n*, 255 F.3d at 1252. Should UPA succeed in this litigation, Utah will not be required to promulgate a stronger moderate SIP to address the Uinta Basin area’s air quality problems for the foreseeable future, or potentially ever, contrary to the Clean Air Act’s requirements.

The Public Interest Groups have a related interest in ensuring that the oil and gas industry in the Uinta Basin is properly regulated to protect public health and the environment. The Public Interest Groups have long sought to reduce ozone pollution in Utah, including in the Uinta Basin, and have worked to ensure the Basin’s oil and gas industry is properly regulated. Nichols Decl. ¶¶ 3–4, 6; Weisheit Decl. ¶¶ 3–4; *San Juan*, 503 F.3d at 1199 (finding it “indisputable that [environmental organization’s] environmental concern is a legally protectable interest.”).

Because pollution from oil and gas drilling, production, and transportation to market are the leading anthropogenic cause of ozone pollution in the Uinta Basin nonattainment area, EPA’s decision, if allowed to stand, will ensure better

regulation of the oil and gas industry. UPA Mot. for Stay of the Final Rule, Case No. 25-9507, Doc. No. 10, at 22 (Feb. 14, 2025) (alleging “UPA members will suffer injuries caused by the Final Rule because UPA members’ operations are the subject of the government’s regulation.”).

The Public Interest Groups’ efforts to ensure improved air quality and proper regulation of the oil and gas industry in the Uinta Basin include, *inter alia*, commenting on inadequate Clean Air Act permits, *see, e.g.*, Comments on Altamont South Permit (May 22, 2024) (Exhibit 3); challenging the leasing of public land in the Basin for oil and gas development, *see, e.g.*, Memorandum and Order, *Rocky Mountain Wild, et al.*, Case No. 2:19-cv-00929-DBB-CMR, Doc. No. 70 (D. Utah Dec. 10, 2020); working to ensure the industry does not harm endemic species protected by the Endangered Species Act, *e.g.*, Order, *Rocky Mountain Wild, et al., v. FWS*, Civil Action No. 15-cv-0615, Doc. No. 59 (D. Colo. Oct. 25, 2016); and educating the public. Nichols Decl. ¶¶ 3–4, 6; Weisheit Decl. ¶¶ 3–4; *see also Seven County Infrastructure Coalition, et al., v Eagle County, Colorado, et al.*, No. 23-975 (Mar. 4, 2024) (pending Supreme Court litigation over the Uinta Basin railway).

*Third*, “[a] public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported.” *Coalition of*

*Arizona/New Mexico Counties for Stable Economic Growth v. DOI*, 100 F.3d 837, 840, 845–46 (10th Cir. 1996) (citation omitted).

The Center challenged EPA’s proposal to grant the extension and find the area in attainment in the rulemaking underlying this direct appeal. As outlined above, the Center submitted extensive technical comments on the flaws in EPA’s proposal and the Uinta Basin’s chronic ozone problem. Ex. 1. EPA ultimately denied the extension and downgraded the area to moderate nonattainment in response to the Center’s comments. Rule at 101,485; *e.g.*, Ex. 2 at 9–13.

Thus, the Public Interest Groups have significant interests at stake in this case, and the disposition of this action could substantially impair these interests.

**C. The Public Interest Groups’ interests will not be adequately represented by the existing parties.**

It is highly unlikely that the Public Interest Groups’ and their members’ interests will be adequately represented by EPA. *See WildEarth Guardians v. NPS*, 604 F.3d at 1200 (“The movant must show only **the possibility** that representation may be inadequate.” (emphasis added)). “[R]epresentation is adequate ‘when the objective of the applicant for intervention is **identical** to that of one of the parties.’” *City of Stilwell v. Ozarks Rural Elec. Coop.*, 79 F.3d 1038, 1042 (10th Cir. 1996) (citation omitted) (emphasis added). Further, “the possibility of divergence of interest need not be great in order to satisfy the burden of the

applicants . . . .” *Natural Resources Defense Council v. US Nuclear Regulatory Comm’n*, 578 F.2d 1341, 1346 (10th Cir. 1978).

The Public Interest Groups’ focused interests on environmental health and protection are not coextensive with EPA’s broader obligation under the Clean Air Act to balance the broad (and often conflicting) interests of the public, states, regulated polluters, and its own administrative efficiency. See *WildEarth Guardians v. USFS*, 573 F.3d at 996 (“In litigating on behalf of the general public, the government is obligated to consider a broad spectrum of views, many of which may conflict with the particular interest of the would-be intervenor.” (citation omitted)).

UPA; the State of Utah; the Seven County Infrastructure Coalition, Duchesne County, and Uintah County; and the Ute Indian Tribe have all challenged the final agency action at issue. Whether in litigation or potential settlement discussions, EPA may balance these diverse public and private interests in a manner that deprioritizes the Public Interest Groups’ goals, which are focused on maximizing the protection of public health and the environment from ozone pollution. “Where a government agency may be placed in the position of defending both public and private interests,” as here, “the burden of showing inadequacy of representation is satisfied.” *WildEarth Guardians v. NPS*, 604 F.3d at 1200 (citation omitted); see also *Fund for Animals, Inc. v. Norton*, 322 F.3d 728,

736 (D.C. Cir. 2003) (the Court “ha[s] often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.”); *id.* at 736–37 & n.9 (collecting cases).

Further, EPA has not always supported the Public Interest Groups’ position that extension of the attainment date is not warranted and that a finding of failure to attain is necessary. *Sanguine, Ltd. v. DOI*, 736 F.2d 1416, 1419 (10th Cir. 1984) (“An applicant may fulfill this burden by showing . . . the representative failed in fulfilling his duty to represent the applicant’s interest.”). EPA originally proposed to grant the extension and to find that the Uinta Basin area attained the ozone NAAQS. 89 Fed. Reg. 25,223. And EPA already granted one extension of the attainment date for the Uinta Basin area, postponing the area’s reclassification to moderate and contravening the Public Interest Groups’ interests. 87 Fed. Reg. at 60,897.

EPA also will not adequately represent the Public Interest Groups’ interests because, while the Public Interest Groups agree with the result of EPA’s action, the Public Interest Groups and EPA partially disagree on the basis of the denial. EPA disagreed with Public Interest Groups’ comments that Utah’s application for the extension was insufficient, that the state has complied with all requirements pertaining to the area, and that the area’s exceedances of the ozone NAAQS prohibit a second extension. *E.g.*, Ex. 2 at 4–7; *see also* 42 U.S.C. 7511(a)(1)–(5).

EPA's narrower rationale very well may affect EPA's approach to litigation or settlement in a way that undermines the Public Interest Groups' interests.

Even when it comes to EPA's ultimate decision to deny the extension and find the area failed to attain, there is no guarantee that EPA will continue to remain aligned with the Public Interest Groups now. *See Utah Ass'n*, 255 F.3d at 1256 (granting intervention and noting "it is not realistic to assume that the agency's programs will remain static or unaffected by unanticipated policy shifts" (citation omitted)). Since EPA issued the Rule, a new Administration has issued Executive Orders that direct EPA to reevaluate its priorities, particularly with respect to oil and gas development.

EPA is now mandated to "encourage energy exploration and production on Federal lands" and to "identify those agency actions that impose an undue burden on the identification, development, or use of domestic energy resources — with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources." Exec. Order No. 14154, "Unleashing American Energy," §§ 2(a), 3(a) (Jan. 20, 2025). These new directives mean that even to the partial extent that EPA's interests aligned with those of the Public Interest Groups, an additional wedge has been driven between those interests.

The Public Interest Groups should not be required to rely on EPA to make arguments necessary to protect their members' health and welfare and to further their missions.

Finally, EPA's "silence on any intent to defend the [intervenors'] special interests is deafening." *Utah Ass'n*, 255 F.3d at 1256 (citation omitted). EPA did not take a position on this motion for leave to intervene and reserved its right to respond. The Public Interest Groups do not have an indication of whether EPA will defend its decision, or to what degree.

Accordingly, the Public Interest Groups "have met their minimal burden of showing that the existing parties may not adequately represent their interests," and should be granted leave to intervene as-of-right.

## **II. Alternatively, the Public Interest Groups merit permissive intervention.**

In addition to being entitled to intervene as-of-right, the Public Interest Groups merit permissive intervention under Federal Rule of Civil Procedure 24(b). Permissive intervention under Rule 24(b)—an "inherently discretionary enterprise," *EEOC v. Nat'l Children's Ctr., Inc.*, 146 F.3d 1042, 1046 (D.C. Cir. 1998)—is typically appropriate where (1) an applicant's defense shares a question of law or fact in common with the underlying action, and (2) the intervention will not unduly delay or prejudice the rights of the original parties. *DeJulius v. New*

*England Health Care Employees Pension Fund*, 429 F.3d 935, 943 (10th Cir. 2005).

The Public Interest Groups satisfy the requirements for permissive intervention. The case is at a preliminary stage and no briefing schedule has yet been set, so this timely motion will not unduly delay or prejudice any other party's rights. Fed. R. Civ. P. 24(b)(3). The Public Interest Groups do not bring new claims, but rather intend to offer defensive arguments in support of EPA's decision in this case, all of which necessarily share questions of law and fact in common with the underlying action. *See Sault Ste. Marie Tribe of Chippewa Indians v. Bernhardt*, 331 F.R.D. 5, 14 (D.D.C. 2019).

## CONCLUSION

For the foregoing reasons, the Court should grant the Public Interest Groups leave to intervene.

Respectfully submitted,

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DATED: February 20, 2025

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to Federal Rule of Appellate Procedure 26.1 and 10th Cir. R. 26.1, the Center for Biological Diversity, Utah Physicians for a Healthy Environment, and Living Rivers certify that they have no parent companies and that no publicly held corporations own 10 percent or more of any organization.

*/s/ Ryan Maher*

Ryan Maher

## **CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT**

In accordance with Federal Rules of Appellate Procedure 32(g)(1) and 27(d)(2)(A), I hereby certify that the foregoing motion contains 5,173 words, as counted by counsel's word processing system, and thus complies with the 5,200 word limit.

Further, this document complies with the typeface and type-style requirements of Federal Rule of Appellate Procedure 32(a)(5) and (a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word for Microsoft 365 using 14-point Times New Roman font.

*/s/ Ryan Maher*

Ryan Maher

## CERTIFICATE OF SERVICE

I hereby certify that on February 20, 2025, I electronically filed the foregoing motion and the associated declarations and exhibits with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

*/s/ Ryan Maher*

\_\_\_\_\_  
Ryan Maher

**No. 25-9507 (related to Nos. 25-9508, 25-9513, & 25-9525)**

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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UTAH PETROLEUM ASSOCIATION,

*Petitioner,*

v.

U.S. ENVIRONMENTAL PROTECTION AGENCY, and  
LEE ZELDIN, in his official capacity as Administrator  
of the U.S. Environmental Protection Agency,

*Respondents.*

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On Petition for Review of a Final Rule of the  
U.S. Environmental Protection Agency

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**DECLARATIONS**

**ACCOMPANYING MOTION FOR LEAVE TO INTERVENE BY  
CENTER FOR BIOLOGICAL DIVERSITY, UTAH PHYSICIANS FOR  
A HEALTHY ENVIRONMENT, AND LIVING RIVERS**

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## DECLARATION OF JOHN WEISHEIT

I, John Weisheit, hereby declare as follows:

1. I have personal knowledge of the facts set forth herein which are known by me to be true and correct and, if called as a witness, I could and would competently testify to them.

2. I am a current member of Living Rivers and the Center for Biological Diversity. I am providing this declaration in support of these organizations' motion to intervene in petitions for review challenging the U.S. Environmental Protection Agency's ("EPA's") efforts to protect clean air in the Uinta Basin of northeastern Utah. *See* U.S. Environmental Protection Agency, "Denial of Request for Attainment Date Extension, Finding of Failure to Attain, and Reclassification of an Area in Utah as Moderate for the 2015 Ozone National Ambient Air Quality Standards," 89 Fed. Reg. 101,483 (Dec. 16, 2024).

3. Living Rivers was founded in 2000 and functions as an environmental advocacy group based in Moab, Utah. Living Rivers is a non-profit corporation dedicated to the preservation, protection, and restoration of rivers and watersheds in the Colorado Plateau, including the Uinta Basin, and promotes river restoration. By articulating conservation and alternative management strategies to the public, we seek to revive the natural habitat and spirit of rivers by undoing the extensive damage done by dams, diversions, and pollution on the Colorado Plateau,

including the Green River and its tributaries in the Uinta Basin. Living Rivers works to ensure the long-term health and viability of human, animal, and plant species, as well as environmental quality threatened by mining and oil and gas operations in the region.

4. The Center for Biological Diversity is dedicated to protecting and restoring imperiled species and natural ecosystems. I share this interest with the Center, which includes protecting public lands, wildlife habitat, and clean air and water in and around the Uinta Basin.

5. I am the Conservation Director and co-founder of Living Rivers and have served in this position since Living Rivers was founded in January 2000. I have a long history of advocacy for the conservation of rivers and watersheds in Utah and have served on the boards of Utah Guides and Outfitters, Colorado Plateau River Guides, and Headwaters Institute. I rely in part on Living Rivers and the Center to protect the public lands, wildlife, watersheds, and air quality that I have an interest in.

6. I am very interested and invested in the health of the environment in the Uinta Basin. My interest stems from my years as a professional raft guide and my life-long love of the outdoors. I continue to run rivers often, including the Green River in the Uinta Basin, and remain an avid hiker, backpacker, and camper on lands in the region. Detrimental impacts to the natural environment where I raft,

hike, backpack, and camp affect my enjoyment of natural, wild, and untrammelled nature of the places I choose to enjoy.

7. I am very aware that air quality in the Uinta Basin has degraded over the years, due in large part to unchecked oil and gas extraction and related infrastructure development. In my years of visiting the Uinta Basin, floating the Green River in the region, and hiking on, camping in, and otherwise enjoying public lands in the region, I have seen firsthand how air quality has declined. I have observed this decline since at least 2010. Once clear skies and views have become more often sullied by the sight of brown and yellowish haze, dust, and smog. Because of excessive air pollution, the region was designated a “nonattainment” area due to violations of health-based ambient air quality standards for ozone. I am aware that ozone is formed when two key pollutants—volatile organic compounds and nitrogen oxides—react with sunlight. Oil and gas development and related activities, including truck traffic, are large sources of volatile organic compounds and nitrogen oxides in the region. Although I have observed that ozone is often a wintertime problem in the Basin, I am aware and have observed that high ozone levels are recorded during summer months as well. Overall, I have observed that air quality in both the summer and winter have declined in the Uinta Basin.

8. The health of air quality, particularly in the Uinta Basin, is very much linked to the health of the environment that supports clean, free flowing rivers and enjoyable river experiences. Air quality is often linked to unchecked industrialization, which can lead to the development of previously undeveloped public lands, the introduction of more water pollution, and the presence of more offensive sights, noise, and smells. Fundamentally, however, the noticeable decline in air quality in the Uinta Basin has diminished my enjoyment of recreating on rivers and lands in the region and made me concerned over my health and well-being. When I see smog in the background of a beautiful tree or landscape, the landscape looks impaired with a yellow or brownish haze and the light level looking different. It is not as beautiful as it could be. Along the White River, where there is a great deal of oil and gas development, I get headaches and I worry about what I'm breathing.

9. I have personally visited many lands opened to oil and gas extraction in the Uinta Basin, including lands along the Green River, which flows from Dinosaur National Monument through the Basin, the Tavaputs Plateau area in the southern portion of the Basin, the Asphalt Ridge area south of Vernal, and lands along the Nine Mile Canyon Road and Wells Draw area south of the town of Myton. I have a keen interest in rare or endangered fish, plant, and bird species, and during nearly all my visits to these areas I carry with me a birding book and

binoculars. I derive great enjoyment from viewing rare species in their natural environment and am constantly on the lookout for not only federally-listed endangered and threatened species, but BLM and state-listed special species as well. During my camping, hiking, and river trips to these areas, I also enjoy the clean air and water provided by these remote areas, the quietness and solitude provided by the surroundings, and the ability to share my knowledge of the areas with others.

10. My land-based camping trips into the Uinta Basin and Tavaputs Plateau began in 2010 and have occurred every year since. The Tavaputs Plateau is a high plateau of the Greater Colorado Plateau and in the Uinta Basin. The Green River divides this plateau into a western and eastern section. The river's upper gorge is called Desolation Canyon and the lower gorge is called Gray Canyon. The highest point of this plateau is 10,000 feet and the landscapes support woodlands of aspen, firs, pines, junipers, and oaks. These highlands condense water vapor into rain and snow that provide the Colorado River Basin with about 400,000 acre-feet of water per year. These trips created my growing awareness of the potentially significant impacts of oil and gas extraction, including impacts from heavy vehicle traffic, noise, habitat fragmentation, soil erosion, air quality degradation, and water depletion and pollution.

11. One of my trips to the Uinta Basin was in May 2020 for the purpose of enjoying the spring wildflowers and the migratory birds of the Tavaputs Plateau and the watershed of the White River and Evacuation Creek. The geology of this area is especially unique and interesting, because its sedimentary rock types, which are from the Late Eocene Period, are very rare finds in the Colorado Plateau. On this trip I explored the area where Evacuation Creek joins the White River in a 4-day river trip down the White River between the bridge at Highway 45 and the Enron boat ramp. This part of the White River has the biggest cottonwood galleries, which I enjoy seeing. I also visited the Gilsonite mining operations at Bonanza, Utah; the Chipeta Natural Gas Field; the Bonanza coal-fired power plant; and the railway that delivers coal to this power station. I intend to continue visiting this landscape for the rest of my days. I also intend to initiate hiking, biking, and rafting trips to enjoy these natural ecosystems with my friends and professional colleagues. In May 2022, I took the same river trip along the White River between the bridge at Highway 45 and the Enron boat ramp. I've since done two more White River trips, one in 2023 and one in 2024. I intend to continue floating the White River and exploring and enjoying public lands in the region.

12. I have personally visited many of the lands opened to oil and gas leasing and drilling within the lands managed by the Vernal Field Office. My first visit to the area was in 1985. In 2013, I visited both Bitter and Parachute Creeks

near the White River mine, which is an oil shale mine site. Additionally, I have visited the area west of the Green River in Desolation Canyon frequently over the past several decades to gain river access. I also visited the area around Monument Ridge just off Seep Ridge Road close to the U.S. Oil Sands exploration site in May of 2020. In 2021, I drove through the area via Seep Ridge Road on my way to Roosevelt. I like to take the backroads byways to see what is going on in the area. In August 2024, I backpacked in the Book Cliffs area in the southern part of the Uinta Basin.

13. I have personally visited the Pariette Bench and Pariette Wetlands area many times traveling to and from river trips to the Green River in Desolation Canyon. I have not camped in this area, but plan to return to the area. Desolation Canyon is my favorite area to do a river trip. My last trip was in 2024. I plan to do another float of Desolation Canyon in the summer of 2025.

14. I have rafted the rivers of the Green River Basin for several decades now, including the areas below, and plan to raft them on future trips:

- (1) Yampa River in Dinosaur National Monument in western Colorado
- (2) Green River in Dinosaur National Monument in eastern Utah
- (3) White River in the Uinta Basin
- (4) Reach 2 of the Green River (about 100 trips)

(5) Reach 3 of the Green River, in Desolation Canyon, until Highway 70 (about 100 trips), and also below Highway 70 to the Colorado River confluence in Labyrinth Canyon (about 100 trips)

15. I am aware of the EPA's recent decision to heighten clean air safeguards for the Uinta Basin. In a December 2024 decision, the agency rejected a request for a second extension of the clean up deadline for the Uinta Basin ozone nonattainment area. In doing so, the agency found the region failed to attain the ozone standards and "bumped up" the Uinta Basin from a "marginal" to a "moderate" nonattainment area.

16. I support this decision as it will help to assure healthy air quality is restored in the Uinta Basin. I understand the decision will establish a new clean up deadline for the ozone nonattainment area and require the establishment of new air quality safeguards to further control emissions of ozone forming pollution.

17. EPA's decision is based on the fact that air quality in the Uinta Basin remains in jeopardy and that clean-up of the region's ozone is not yet assured. I have seen this firsthand. Although there are some good air quality days in the Uinta Basin, I continue to observe and experience high air pollution days in the summer and wintertime. The region is far from experiencing continuous clean air.

18. If EPA had granted Utah's request for an extension of the attainment deadline for the ozone nonattainment area and had found the region attained the

ozone air quality standards, as it had initially proposed, it could have had the effect of putting the Uinta Basin in air quality purgatory. Such a finding would have lifted any requirements for the State of Utah to further reduce pollution, even if the region continued to experience high ozone levels. The EPA's decision is a critical recognition that more vigilance is needed to fully protect clean air in the Uinta Basin.

19. I am aware that petitions have been filed challenging EPA's December 2024 decision. If one or more of those petitions are granted, my interests, as well as those of Living Rivers and the Center for Biological Diversity will be harmed. If one or more of those petitions are granted, they could have the effect of requiring EPA to find that the Uinta Basin has attained the ozone ambient air quality standards, even though the region clearly has not come into compliance with these health-based standards. Such a finding would eliminate any further clean up deadlines and lift any further requirements for the State of Utah, or any other regulatory entity for that matter, to reduce air pollution, even if the Uinta Basin continues to experience high ozone. Such a finding would support the status quo, which is unhealthy levels of ozone pollution.

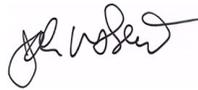
20. Ongoing high air pollution levels in the Uinta Basin will interfere with my ability to fully enjoy recreating outdoors in the region as I continue to visit lands and rivers in the region. A decision in favor of Petitioners would further

allow ongoing high ozone levels in the Uinta Basin. A decision against Petitioners would redress the harms that I would otherwise experience. A decision against Petitioners would uphold EPA's denial of an extension and finding of failure to attain, which would affirm a new clean up deadline for the Uinta Basin ozone nonattainment area and require additional pollution reductions to bring the region into compliance with health-based air quality standards.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed in Moab, Utah.

2-20-2025

Date



John Weisheit

**DECLARATION OF JEREMY NICHOLS**

I, Jeremy Nichols, declare as follows:

1. The facts set forth in this declaration are based on my personal knowledge. If called as a witness in these proceedings, I could and would testify competently to these facts.

2. I currently live in Lakewood, Colorado.

3. I am a member of the Center for Biological Diversity (“the Center”) and have been since 2011. I am also an employee of the Center. I am a Senior Advocate for the organization. The Center is dedicated to protecting and restoring imperiled species and natural ecosystems. Among other things, the Center works to protect biodiversity and human health from toxic substances while promoting a deep understanding of the inextricable connection between the health of humans and all other species. I share this interest with the Center, which includes protecting public lands, fish and wildlife, and environmental health in and around the Uinta Basin. I rely in part on the Center to protect the public lands, wildlife, and air quality that I have an interest in.

4. I am also a member of Utah Physicians for a Healthy Environment (“Physicians”) and have been since 2012. I am very familiar with and support the Physicians’ mission, which is to protect the health and well-being of the residents of Utah by promoting science-based education and interventions that result in

progressive, measurable improvements to the health of the environment. I rely in part on Physicians to protect air quality in Utah.

5. I am providing this declaration in support of these organizations' motion to intervene in petitions for review challenging the U.S. Environmental Protection Agency's ("EPA's") final rule denying a request for an extension of the attainment deadline for the Uinta Basin ozone nonattainment area in northeastern Utah and finding that the Uinta Basin failed to attain the national ambient air quality standards ("NAAQS") for ozone. *See* U.S. Environmental Protection Agency, "Denial of Request for Attainment Date Extension, Finding of Failure to Attain, and Reclassification of an Area in Utah as Moderate for the 2015 Ozone National Ambient Air Quality Standards," 89 Fed. Reg. 101,483 (Dec. 16, 2024). I am very familiar with this EPA decision. On behalf of the Center, I helped draft and submit comments on the EPA's initial proposal. *See* EPA, "Extension of the Attainment Date and Determination of Attainment by the Attainment Date of the Uinta Basin Marginal Nonattainment Area Under the 2015 Ozone National Ambient Air Quality Standards," 89 Fed. Reg. 25,223 (April 10, 2024).

6. Both the Center and the Physicians have a longstanding and substantial interest in air quality in the Uinta Basin. For many years, the Physicians have advocated for stronger safeguards to reduce ground-level ozone pollution, the key ingredient of ozone, and protect public health throughout Utah,

including in the Uinta Basin. The Center and the Physicians have been centrally involved in efforts to scrutinize the air quality and other impacts of oil and gas infrastructure development in the Uinta Basin, including the Uinta Basin Railway, a massive new rail proposal that would induce a significant increase in oil and gas extraction in the region.

7. I am very aware of the decline in air quality in the Uinta Basin primarily due to increases in air pollution from oil and gas extraction in the region and increase in ground-level ozone, the key ingredient of smog. For many years, I have worked to draw the EPA and other agencies' attention to the problem of high ozone pollution in the region and engaged in efforts to curtail emissions and reduce ozone in the Uinta Basin. Oil and gas extraction activities release large amounts of volatile organic compounds and nitrogen oxides, both of which react with sunlight to form ozone gas. Unchecked emissions have fueled high ozone levels in the region.

8. I have engaged in efforts to protect air quality in the Uinta Basin because it is a place I visit regularly and greatly appreciate. I am an outdoor enthusiast and enjoy the Uinta Basin's beautiful outdoor scenery, wild landscapes, open high desert public lands, rivers, and fish and wildlife. However, over the years, I have grown very concerned over the decline in air quality and the rise in ozone, which is normally a big city problem. This air pollution has made me very

concerned over my health and interfered with my enjoyment of the outdoors in the Uinta Basin.

9. My use and enjoyment of the outdoors in the Uinta Basin, particularly on the region's public lands, are extensive and longstanding. I regularly visit public lands in and around the Uinta Basin to hike, view wildlife, especially birds, enjoy the natural scenery, and rockhound. I have visited and enjoyed public lands in the Uinta Basin about every year since 2009. These lands include areas managed by the U.S. Bureau of Land Management ("BLM"), U.S. Forest Service ("USFS"), U.S. Fish and Wildlife Service ("USFWS"), and lands managed by the State of Utah. Areas I regularly visit for recreational enjoyment include, but are not limited to:

- BLM lands in the Wells Draw area in eastern Duchesne County, including lands along the Nine Mile Canyon Backcountry Byway and in Gilsonite Draw and Fivemile Canyon. I've hiked on these lands, enjoyed the views while hiking, particularly of the Uinta Mountains to the north of the Uinta Basin and the Tavaputs Plateau to the south of the Uinta Basin, and viewed wildlife and generally enjoyed being outside in a remote and relatively undeveloped landscape.
- BLM lands in the Pariette Bench and Eight Mile Flat area in southwestern Uintah County. I've hiked on these lands, enjoyed the views while hiking,

particularly of the Uinta Mountains to the north of the Uinta Basin and the Tavaputs Plateau to the south of the Uinta Basin, and viewed wildlife and generally enjoyed being outside in a remote and relatively undeveloped landscape.

10. My most recent visits to the Uinta Basin were in May of 2023 and December of 2024. In May 2023, I visited and enjoyed recreating upon BLM managed public lands in the Wells Draw area south of the town of Myton. In December 2024, I had the opportunity to take a few hours' hike southwest of Vernal on BLM managed lands along the McCoy Flats Road while on a trip to visit family in Idaho. I intend to return to visit the region's public lands in May 2025 when I intend to go on two-day trip to visit the Ouray National Wildlife Refuge southwest of Vernal and hike on public lands in the area.

11. As I have recreated on public lands in the Uinta Basin, my recreational enjoyment has already been diminished by the construction and operation of oil and gas extraction facilities, including wells, pumpjacks, tanks, compressor stations, pipelines, processing plants, and waste disposal facilities. The sights, sounds, and in many cases smells of this development have degraded the scenic integrity of public lands, made hiking and rockhounding outdoors less enjoyable, and have even interfered with my ability to visit certain lands due to safety and health concerns. As oil and gas extraction activities have occurred in the

Uinta Basin and in many areas ramped up, there has been a noticeable decline in air quality, including hazier skies, more particulate matter, and more smog. I've visited in both winter and summertime and experienced degraded air quality, which has interfered with my recreational enjoyment of public lands in the region. Seeing this air pollution makes recreational outings less enjoyable. Air pollution detracts from the scenic integrity of the landscape, is offensive to observe while outdoors, and makes me more concerned and anxious over my health and well-being

12. The decline in air quality and rise in ozone pollution in the Uinta Basin is well known and documented. In 2012, the EPA designated the region as “unclassifiable” due to exceedances of ozone national ambient air quality standards. *See* EPA, “Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards,” *See* 77 Fed. Reg. 30,088 (May 21, 2012). The EPA did not designate the region as “nonattainment” due to bureaucratic labeling of monitors. In 2018, the region was finally designated an ozone “nonattainment” area by the EPA due to ongoing violations of national ambient air quality standards for ozone. Since that time, the region has continued to experience high ozone levels, a sign that more work is needed to curtail emissions and protect clean air.

13. Recognizing ongoing ozone problems in the Uinta Basin, the EPA found in December 2024 that the nonattainment area had failed to attain the

national ambient air quality standards for ozone. In doing so, the EPA rejected a request by the state of Utah to extend the attainment deadline. Initially, the EPA had proposed to agree to extend the attainment deadline and find that the area had attained the national ambient air quality standards, although the agency solicited public comment and information to inform any final decision on the matter. On behalf of the Center for Biological Diversity, I helped draft and submit comments to the EPA calling attention to the fact that the Uinta Basin had recently experienced the worst ozone pollution in a decade and that attainment of the national ambient air quality standards had not been achieved. These comments helped inform EPA's final decision on the matter.

14. The EPA's December 2024 finding had the effect of rejecting an extension of the attainment deadline and finding the Uinta Basin failed to attain, which had the effect of reclassifying the Uinta Basin from a "marginal" nonattainment area to a "moderate" nonattainment area by operation of law. Because "moderate" nonattainment areas are subject to more stringent pollution reduction requirements under the Clean Air Act, the EPA's finding promised more assurance that the Uinta Basin's clean air would be restored. I support the EPA's decision. It establishes new clean up deadlines and will assure the implementation of additional safeguards to further control emissions of ozone forming pollution.

15. EPA's decision is based on the fact that air quality in the Uinta Basin remains in jeopardy and that attainment is not yet assured. I have experienced this firsthand. In my visits to the Uinta Basin over the years, there have been some good air quality days, but there continue to be high air pollution days in the summer and wintertime.

16. If EPA had found the region attained the ozone air quality standards, it could have had the effect of putting the Uinta Basin in air quality limbo. Such a finding would have lifted any requirements for the State of Utah to further reduce pollution, even if the region continued to experience high ozone levels. The EPA's decision is a critical recognition that more vigilance is needed to fully protect clean air in the Uinta Basin. The EPA itself recognized this in its December 2024 finding, stating:

[D]etermining that the area attained by its attainment date would mean that the Uinta Basin would remain in Marginal nonattainment, even though the area has experienced significant violations of the NAAQS after the attainment date and likely will do so in the future if the same meteorological conditions reoccur in future winters....[T]he area could continue violating the 2015 ozone NAAQS indefinitely without being subject to any of the [Clean Air Act's] attainment planning requirements and consequences that were designed to ensure that nonattainment areas progress to attainment.

89 Fed. Reg. 101,485.

17. I am aware that petitions have been filed challenging EPA's December 2024 decision. If one or more of those petitions are granted, my interests, as well as those of the Center for Biological Diversity and Utah Physicians for a Healthy Environment will be harmed. If one or more of those petitions are granted, they could have the effect of requiring EPA to find that the Uinta Basin has attained the ozone ambient air quality standards, even though the region clearly has not come into compliance with these health-based limits. Such a finding would eliminate any further clean up deadlines and lift any further requirements for the State of Utah, or any other regulatory entity for that matter, to reduce air pollution, even if the Uinta Basin continues to experience high ozone.

18. Ongoing high air pollution levels in the Uinta Basin will interfere with my ability to fully enjoy recreating outdoors in the region as I continue to visit and attempt to enjoy the outdoors in the region. A decision in favor of Petitioners would further allow ongoing high ozone pollution in the Uinta Basin. A decision against Petitioners would redress the harms that I, as well as the Center for Biological Diversity and Utah Physicians for a Healthy Environment, would otherwise experience. A decision against Petitioners would uphold EPA's finding of failure to attain, which would affirm a new clean up deadline for the Uinta Basin

ozone nonattainment area and require additional pollution reductions to bring the region into compliance with health-based ozone limits.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this 20th day of February 2025



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Jeremy Nichols



May 10, 2024

Submitted via [regulations.gov](https://www.regulations.gov) and e-mail

Michael Regan  
Administrator  
U.S. Environmental Protection Agency  
Office of the Administrator  
Mail Code 1101A  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

KC Becker  
Region 8 Administrator  
U.S. Environmental Protection Agency  
Office of the Regional Administrator  
1595 Wynkoop St.  
Denver, CO 80202

**Re: Docket ID No. EPA-R08-OAR-2024-0001, Proposed Extension of Attainment Date and Determination of Attainment of the Uinta Basin, Utah Marginal Ozone Nonattainment Area**

Dear Administrator Regan and Regional Administrator Becker:

The Center for Biological Diversity submits the following comments in response to the U.S. Environmental Protection Agency's ("EPA's") proposed "Extension of the Attainment Date and Determination of Attainment by the Attainment Date of the Uinta Basin Marginal Nonattainment Area Under the 2015 Ozone National Ambient Air Quality Standards," Docket ID No. EPA-R08-OAR-2024-0001. See 89 Fed. Reg. 25,223-25,229 (April 10, 2024). We object to the EPA's proposal as it defies the Clean Air Act and ignores the critical state of air quality in the Uinta Basin, which encompasses Uintah and Duchesne Counties in northeast Utah.

On the whole, the proposal is a distressing affront to clean air, the EPA's duty to ensure attainment and maintenance of the national ambient air quality standards ("NAAQS"), and to the agency's obligation to protect public health and the environment. The EPA is proposing to exercise its discretion to disregard the poor state of air quality in the Uinta Basin on the basis of one incredibly unusual year, 2022, during which there were zero exceedances of 2015 ozone NAAQS. **Since ozone monitoring began in the Uinta Basin, there has never been a single year without an exceedance of the ozone NAAQS.** Now, after one suspiciously anomalous year, the EPA is claiming that ozone pollution in the Uinta Basin has been cleaned up and that no regulatory entity must do anything more to curtail this harmful pollutant. This proposal comes even after 2023 was one of the worst ozone years on record in the Uinta Basin and the region remains deeply out of compliance with the ozone NAAQS.

This reckless proposal only promises to perpetuate the Uinta Basin's ozone problem. If finalized, the EPA's action would effectively put the region in ozone limbo,

allowing ongoing violations of the ozone NAAQS to continue with no regulatory consequences under the Clean Air Act.

The EPA acknowledges that the Clean Air Act gives the agency discretion to extend an area's applicable attainment date. See 89 Fed. Reg. 25,225. This means that, even if the criteria under 42 U.S.C. § 7511(a)(5) are met, the agency is under no obligation to entertain an attainment date extension. For this reason, the agency's proposal is all-the-more troubling. We urge the EPA to reconsider and to exercise its discretion for good. To this end, we urge the EPA to find the Uinta Basin failed to attain.

Even if the EPA decides to use its discretion to cover up the Uinta Basin's ongoing and deepening ozone problem, the agency's proposal and available information and analysis indicates the Uinta Basin does not meet the criteria for an extension under 42 U.S.C. § 7511(a)(5). Although the agency may have discretion, it still must demonstrate the criteria under 42 U.S.C. § 7511(a)(5)(A) and (B) are met in order to justify using this discretion to extend an attainment date. In this case, the EPA has not made this demonstration.

The EPA cannot grant Utah's request for a second extension of the attainment date for the Uinta Basin and cannot find that the Uinta Basin has attained the 2015 ozone NAAQS on the basis of a new extended attainment date. The EPA must find that the Uinta Basin failed to attain by the first extended attainment date of August 3, 2022 and accordingly reclassify the region as a moderate ozone nonattainment area pursuant to 42 U.S.C. § 7511(b)(2). Our detailed concerns are as follows:

#### **I. Air Quality in the Uinta Basin is as Bad as Ever**

The rationale for EPA's proposed action rests on the unfounded assumption that air quality has improved in the Uinta Basin. This assumption is not only baseless, but willfully ignorant.

Although 2022 was an anomalous year in that there were no exceedances of the 2015 ozone NAAQS, this one year is an extreme exception to the norm in the Uinta Basin. For over a decade, monitors in the Uinta Basin have recorded violations of the 2015 ozone NAAQS. The table below highlights recorded violations of the ozone NAAQS at monitors in the Uinta Basin since 2014. Even after the region was designated nonattainment in 2019, the region continued to violate. The table below show design values for ozone monitors in the Basin over last 10 years. The cells shaded yellow are design values in violation. The cells shaded orange are right at the level of the NAAQS.

**Design values (in parts per million)  
for Uinta Basin ozone monitors, 2014-2023<sup>1</sup>**

Monitor Site Name	Monitor ID	2012-2014	2013-2015	2014-2016	2015-2017	2016-2018	2017-2019	2018-2020	2019-2021	2020-2022	2021-2023
Dinosaur N.M.	490471002			0.068	0.072	0.072	0.070	0.066	0.067	0.064	0.076
Vernal	490471004					0.070	0.067	0.065	0.065	0.064	0.070
Redwash	490472002				0.075	0.075	0.072	0.069	0.070	0.066	0.071
Ouray	490472003		0.079	0.080	0.088	0.088	0.089	0.076	0.078	0.067	0.076
White Rocks	490477022			0.071	0.071	0.072	0.067	0.067	0.066	0.065	0.073
Roosevelt	490130002	0.078	0.075		0.073	0.076	0.078	0.073	0.074	0.067	0.079
Myton	490137011		0.073	0.072	0.077	0.077	0.075	0.069	0.070	0.066	0.076

Although no design values for the years 2020-2022 were in violation, this changed dramatically after 2023 where ozone soared to levels not seen in years. As a consequence, the current design value for all but one monitor in the region is in violation of the NAAQS, with design values at four monitors in violation of the 2008 ozone NAAQS of 0.075 parts per million.

The 2023 ozone season was so bad that each monitor in the Uinta Basin recorded dozens of exceedances of the NAAQS. The maximum 8-hour concentrations exceeded 0.100 parts per million on four days, with concentrations peaking at 0.119 at two monitoring sites on February 5, 2023, 70% above the level of the 0.070 parts per million NAAQS. The table below shows the first through fourth highest 8-hour ozone readings recorded in 2023.

**First through fourth highest 8-hour ozone readings recorded  
at Uinta Basin monitors in 2023 (in parts per million)<sup>2</sup>**

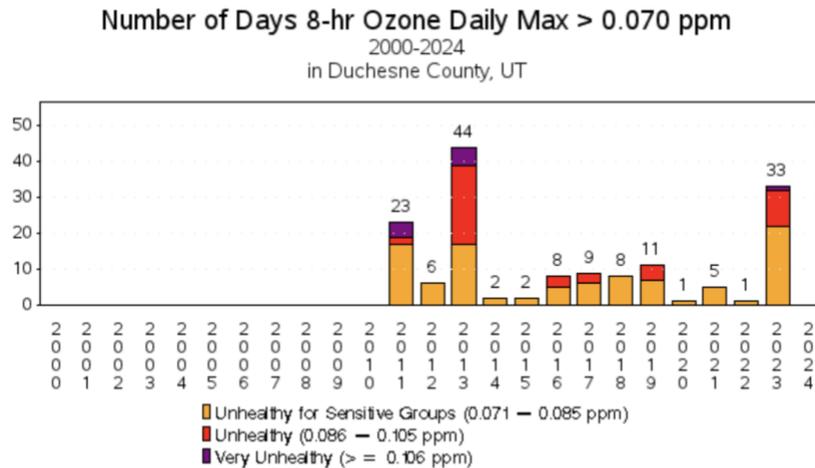
Monitoring Site	Monitor ID	County	1st Max.	Date	2nd Max.	Date	3rd Max.	Date	4th Max.	Date
White Rocks	490477022	Uintah	0.105	5-Feb-23	0.099	13-Feb-23	0.09	12-Feb-23	0.088	3-Feb-23
Ouray	490472003	Uintah	0.102	5-Feb-23	0.098	19-Feb-23	0.093	4-Feb-23	0.091	14-Feb-23
Redwash	490472002	Uintah	0.105	5-Feb-23	0.095	4-Feb-23	0.086	13-Feb-23	0.081	6-Feb-23
Vernal	490471004	Uintah	0.104	5-Feb-23	0.088	4-Feb-23	0.082	13-Feb-23	0.078	6-Feb-23
Dinosaur NM	490471002	Uintah	0.119	5-Feb-23	0.108	6-Feb-23	0.106	4-Feb-23	0.098	13-Feb-23
Myton	490137011	Duchesne	0.119	5-Feb-23	0.101	12-Feb-23	0.094	8-Feb-23	0.094	13-Feb-23
Roosevelt	490130002	Duchesne	0.117	5-Feb-23	0.1	12-Feb-23	0.099	4-Feb-23	0.099	26-Feb-23

Far from “one or two bad days,” the 2023 data shows that ozone levels exceeded the NAAQS on more than 30 days, including virtually the entire month of February. In Duchesne County, 33 exceedances of the NAAQS were recorded and 36 were recorded in Uintah County. The charts below show ozone exceedances recorded over

<sup>1</sup> Design value data from EPA’s 2022 ozone design value spreadsheet, available at [https://www.epa.gov/system/files/documents/2023-05/O3\\_DesignValues\\_2020\\_2022\\_FINAL\\_05\\_22\\_23.xlsx](https://www.epa.gov/system/files/documents/2023-05/O3_DesignValues_2020_2022_FINAL_05_22_23.xlsx). Design values for 2021-2023 were calculated using 2023 ozone monitoring data downloaded from EPA’s AirData website, <https://www.epa.gov/outdoor-air-quality-data/download-daily-data>.

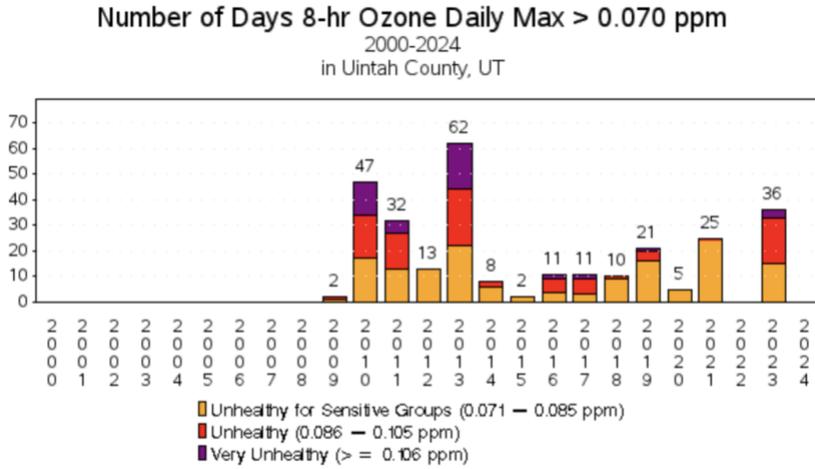
<sup>2</sup> 2023 ozone data downloaded from EPA’s AirData website, <https://www.epa.gov/outdoor-air-quality-data/download-daily-data>.

the years in the Uinta Basin. Not since 2013 has air quality been so bad in the Uinta Basin, making 2023 one of the worst ozone years on record in the region.



Note: Based on ALL sites  
 Source: U.S. EPA AirData <<https://www.epa.gov/air-data>>  
 Generated: May 2, 2024

**Ozone NAAQS exceedances in the Uinta Basin in 2023,  
 Duchesne County above, Uintah County below.<sup>3</sup>**



Note: Based on ALL sites  
 Source: U.S. EPA AirData <<https://www.epa.gov/air-data>>  
 Generated: May 2, 2024

As a result of 2023's high ozone, the 2022-2024 design values at three Uinta Basin monitors are already above the 2015 ozone NAAQS. The table below shows that current design values at the Dinosaur National Monument, Myton, and Roosevelt

<sup>3</sup> Ozone exceedance charts downloaded from EPA's AirData website, <https://www.epa.gov/outdoor-air-quality-data/air-data-ozone-exceedances>. Although the charts go back to 2000, acceptable ozone monitoring in the Uinta Basin only began in 2009.

monitors are above the NAAQS based on 2024 monitoring data to date. The data also shows that the White Rocks monitor is on the cusp of violating and even the Vernal monitor is creeping closer to a violation. Even if 2024 is another anomalously clean year (it does not appear that it is or will be), the Uinta Basin will still be in violation of the ozone NAAQS and faces almost certain ongoing violations given trends.

**2022-2024 design value for Uinta Basin ozone monitors  
(in parts per million)<sup>4</sup>**

Monitoring Site	2022-2024 to date)
White Rocks	0.07
Ouray	NA
Redwash	NA
Vernal	0.066
Dinosaur NM	0.073
Myton	0.073
Roosevelt	0.074

While EPA acknowledges in its proposal that the Uinta Basin “experienced excessively high ozone values” and that “there continue to be periods of high ozone levels in the Basin,” the agency does not appear to have considered the actual and complete nature of the situation. See 89 Fed. Reg. 25,226. Indeed, it does not appear as if the current state of air quality in the Uinta Basin was considered at all in the proposal. An acknowledgment is not the same as substantive consideration of relevant factors. In exercising its discretion, EPA must give meaningful consideration, rather than a fleeting acknowledgement, of the state of air quality in the Uinta Basin.

**II. Utah’s Application for an Extension is Deficient**

We are also concerned that EPA is proposing to act upon a deficient submission from the State of Utah and has no authority to now grant the state’s request for a second extension of the attainment date for the Uinta Basin.

The Clean Air Act is clear that the EPA can only act to extend an attainment date “[u]pon application by any State[.]”. 42 U.S.C. § 7511(a)(5). Furthermore, the EPA can only extend an attainment deadline if “the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan” and “no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year.” 42 U.S.C. § 7511(a)(5)(A) and (B). Implicit in the statute is that any application from a state must

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<sup>4</sup> Based on 2022-2024 ozone data downloaded from EPA’s AirData website, <https://www.epa.gov/outdoor-air-quality-data/download-daily-data>. 2024 monitoring data for the Ouray and Redwash monitors has not yet been made available via AirData.

demonstrate that any extensions are justified and consistent with the criteria set forth under 42 U.S.C. § 7511(a)(5)(A) and (B).

Here, Utah's March 30, 2022 application, which is only two pages long, does not demonstrate that a second extension of the attainment date is warranted.

With regards to compliance with all requirements and commitments pertaining to the Uinta Basin in the Utah State Implementation Plan ("SIP"), Utah provides no legitimate demonstration that is in compliance. While EPA asserts that Utah has "certified that they have complied with all requirements and commitments pertaining to this area in their approved implementation plan," Utah has not certified compliance. In its submission, Utah states only that the EPA has approved various submissions related to the Uinta Basin, including "the Emission Statement Rule and the Nonattainment New Source Review Requirements." Simply because the EPA has approved submissions from Utah does not mean that Utah is complying with the SIP. Utah also asserts that EPA has determined that, "Utah had met all requirements for its Marginal NAAs [nonattainment areas] under the 2015 8-hour ozone NAAQS." However, EPA has not determined that Utah is complying with the SIP, only that Utah has submitted and received approval of various SIP requirements related to marginal nonattainment areas under the 2015 ozone NAAQS.

Utah's March 30, 2022 submission appears to misinterpret the Clean Air Act. Rather than demonstrating compliance with SIP requirements related to the Uinta Basin, Utah appears to believe it must only demonstrate that relevant SIP submissions have been approved by EPA. In other words, Utah appears to believe that all it must do is demonstrate that rules have been adopted, not that the rules are being complied with. The Clean Air Act is explicit that a state must demonstrate compliance "with all requirements and commitments pertaining to the area in the applicable implementation plan." 42 U.S.C. § 7511(a)(5)(A).

EPA cites *Delaware Department of Natural Resources and Environmental Control v. EPA* for the proposition that a state need not certify compliance with its SIP in applying for an extension. See *Delaware Dept. of Nat. Resources and Env'tl. Control v. EPA*, 895 F.3d 90, 101-102 (D.C. Cir. 2018). However, in that case, EPA conducted its own review and applied its own methodology for determining whether New Jersey was complying with its SIP. Here, EPA relied on Utah's claim that it is complying with relevant SIP requirements, asserting that the state "has certified that they have complied with all requirements and commitments pertaining to [the Uinta Basin] in their approved implementation plan[.]" 89 Fed. Reg. 25,226. However, the only thing Utah has certified is that certain submissions have been made to the EPA and been approved, not that it is actually complying with all requirements and commitments in the SIP that pertain to the Uinta Basin.

With regards to monitoring data, Utah only cites data from the two ozone monitors in the Uinta Basin that the state directly operates—the Vernal monitor in Uintah County and the Roosevelt monitor in Duchesne County. However, there are at

least seven ozone monitors currently operating in the Uinta Basin and gathering data for regulatory purposes. In addition to the Vernal and Roosevelt monitors, these include the White Rocks (490477022), Ouray (490472003), Redwash (490472002), Dinosaur National Monument (490471002), and Myton (490137011) monitors. Utah does not present or attempt to address monitoring data from these monitoring sites.

Although EPA may have discretion to review monitoring data beyond that referenced and/or submitted by a state, in this case the agency has relied on Utah's submission to conclude that monitoring data justifies an extension of the attainment date. As EPA states, "The information presented by the state in their request demonstrates that the area meets the two necessary statutory criteria for the second 1-year extension under CAA [Clean Air Act] section 181(a)(5)." 89 Fed. Reg. 25,226. Utah's submission, however, does not demonstrate that the Uinta Basin qualifies for an extension according to the criteria under 42 U.S.C. § 7511(a)(5)(B). All Utah's submission demonstrates is that two out of seven ozone monitors in the Uinta Basin meet the criteria for an extension under 42 U.S.C. § 7511(a)(5)(B).

Utah's cursory application for a second one-year extension of the attainment date for the Uinta Basin is clearly deficient and incomplete. In spite of this, EPA asserts the application "demonstrates" that the criteria under 42 U.S.C. § 7511(a)(5) have been met. The application does not "demonstrate" that the criteria under 42 U.S.C. § 7511(a)(5) have been met. Accordingly, EPA must reject Utah's application and cannot grant a second one-year extension of the attainment date.

### **III. EPA's Proposal is Legally Deficient**

Even if the EPA decides to exercise its discretion to cover up for Utah's deficient application and conduct its own review of relevant information and data, the agency still cannot conclude that the criteria under 42 U.S.C. § 7511(a)(5) have been met.

Specifically, it does not appear as if Utah is currently complying with all requirements and commitments pertaining to the Uinta Basin that are in the applicable federally approved Utah SIP. We are especially concerned that it does not appear as if Utah is complying with applicable federally approved new source review permitting requirements for new and modified sources of ozone precursor emissions, namely nitrogen oxides ("NO<sub>x</sub>") and volatile organic compounds ("VOCs"), in the Uinta Basin. Our concerns are twofold.

#### **A. Utah is Not Complying With SIP Stationary Source Permitting Requirements as They Pertain to the Uinta Basin**

Utah is inappropriately allowing stationary sources associated with the oil and gas sector, particularly oil and gas well sites, to avoid new source review oversight and permitting requirements under the Utah SIP. Under the Utah SIP, before a person can construct a new source of air pollution or modify an existing source to increase emissions, a permit must be obtained. Under the SIP, any new or modified stationary

source that has actual emissions of VOCs and NO<sub>x</sub> greater than five tons per year must submit a notice of intent and obtain an approval order from the Utah Division of Air Quality (“DAQ”) that meets the requirements of the Utah SIP at R307-401-8, including, among other things, “best available control technology” requirements at R307-401-8(1)(A) and protection of the NAAQS at R307-401-8(1)(b)(iv). R307-401-3. In spite of this requirement, DAQ has been allowing new and modified oil and gas industry stationary sources that emit more than five tons per year of NO<sub>x</sub> and/or VOCs in the Uinta Basin to avoid submitting notices of intent and obtaining approval orders prior to constructing.

In support of this practice, DAQ relies on R307-401-10, which sets forth “source category exemptions” to new source review permitting requirements. Specifically, R307-401-10(5) exempts “[an oil and gas] well site as defined in 40 CFR 60.5430a, including centralized tank batteries, that is not a major source as defined in Section R307-101-2, and is registered with the Division as required by Rule R307-505.” In other words, if an oil and gas well site is registered with DAQ as required by R307-505, it is exempt from new source review permitting, even if the source has actual emissions of NO<sub>x</sub> and/or VOCs greater than five tons per year. Utah refers to this practice as “Permit by Rule,” or PBR.

While R307-401-10(5) has been incorporated into the SIP, R307-505 has not been federally approved and is not incorporated into the SIP.<sup>5</sup> This is problematic. DAQ cannot rely on rules that are not federally approved and not incorporated into the SIP to allow sources in the Uinta Basin ozone nonattainment area to avoid compliance with the Utah SIP. DAQ’s reliance on R307-505 is even more problematic as this state-only enforceable rule only requires that sources subject to oil and gas PBR requirements comply with other non-federally enforceable requirements that also have not been incorporated into the SIP. R307-505-3(4) specifically requires sources to comply with “R307-506 through R307-510,” which set forth only non-federally enforceable requirements related to the control of emissions from certain sources of emissions associated with oil and gas well sites.

Here, the registration requirements under R307-505 have not undergone review by EPA to determine whether they even comply with new stationary source review requirements under 40 C.F.R. § 51.160. Further, in accordance with 42 U.S.C. § 7410(l), the EPA has not determined whether the registration, or PBR, requirements interfere with attainment or maintenance of the NAAQS.

A stationary source of pollution cannot utilize non-SIP rules to avoid compliance with a SIP. Here, sources cannot rely on non-federally enforceable rules to claim an exemption to SIP new source review permitting. In this case, oil and gas industry sources of pollution cannot rely on the registration requirements at R307-505, as well as

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<sup>5</sup> In fact, while Utah submitted R307-505 for EPA review as a SIP revision, Utah ultimately withdrew that submission. See Exhibit 1, Letter from Utah to EPA Region 8, “Withdrawal of Rule Submittals” (June 13, 2022). It is not clear whether it has since been resubmitted, but what is clear is that R307-505 has not been incorporated into the Utah SIP.



with the SIP in the Uinta Basin as it relates to the permitting of stationary oil and gas sources under R307-401-10(5).

Utah's PBR rules at R307-505 have not been incorporated into the SIP and therefore cannot be relied on to exempt sources from compliance with the SIP. Although Utah is free to develop and implement a state-only PBR program, such a program cannot be implemented in such a way as to interfere with implementation of the Utah SIP. There is clear evidence that Utah is allowing the PBR program to interfere with SIP compliance, particularly in the Uinta Basin ozone nonattainment area. Accordingly, Utah is not complying with its SIP and the EPA cannot grant a second extension of the attainment date.

### **B. Utah is Not Issuing Enforceable Permits for Stationary Sources**

In addition to failing to comply with the SIP with regards to the exemption of oil and gas industry stationary sources of ozone precursor emissions in the Uinta Basin, Utah is also failing to issue permits for oil and gas sources that comply with the SIP.

Under the Utah SIP, limits on emissions in approval orders must be enforceable as a practical matter.<sup>7</sup> To ensure the practical enforceability of limits, EPA has stated that permits must not only "contain a production or operational limitation," but also "an emission limitation in cases where the emission limitation does not reflect the maximum emissions of the source operating at full design capacity without pollution control equipment." Exhibit 3, EPA, "Limiting Potential to Emit in New Source Permitting" (June 13, 1989) at 5-6.

In Utah's case, the state is issuing approval orders that do not actually contain emission limitations, even though estimated potential emissions are not based on the maximum emissions of the source operating at full design capacity without pollution controls. Rather, the state is issuing approval orders that only contain production or operational limitations. In this case, approval orders without actual emission limitations are not enforceable as a practical matter.

In the Uinta Basin, there are numerous examples where Utah permitted new or modified sources of ozone precursor emissions after the region was designated nonattainment yet failed to properly include any emission limitations to ensure the enforceability of the limits. Among them:

- On September 20, 2023, Utah issued approval order DAQE-AN142100006-20, authorizing a modification Ovintiv USA's Pleasant Valley Compressor Station, which is located in Duchesne County in the Uinta Basin nonattainment area. See Exhibit 4, DAQ, Approval Order DAQE-AN142100007-23 (Sept. 20, 2023). The modification authorized increased VOC emissions and estimated total VOC

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<sup>7</sup> Specifically, approval orders must be "enforceable," meaning enforceable by the EPA. See R307-101-2 (setting forth definition of "enforceable"). To be enforceable by the EPA, approval orders must also be enforceable as a practical matter.

emissions to be 79.29 tons per year. This estimate is based on the utilization of emission controls, in particular a flare, to reduce emissions from engine blowdowns, a dehydrator, storage tanks, and truck loading. However, while the permit contains some operational requirements for the flare at Section II.B.2, the approval order does not actually establish a VOC emission limit. Although the approval order contains a “Summary of Emissions,” this summary of potential emissions appears to be informational and not a table of actual numerical limits. Further, while the permit established VOC limits for engine exhaust at the compressor station at Section II.B.5.a, it does not establish VOC limits for engine blowdowns, the dehydrator, storage tanks, or truck loading. Accordingly, the approval order does not actually establish a practically enforceable VOC emission limitation.

- On September 20, 2023, Utah issued approval order DAQE-AN143380007-15, authorizing a modification Ovintiv USA’s Ranch Compressor Station, which is located in Duchesne County in the Uinta Basin nonattainment area. See Exhibit 5, DAQ, Approval Order DAQE-AN143380008-23 (Sept. 20, 2023). The modification authorized increased VOC emissions and estimated total VOC emissions to be 72.18 tons per year. This estimate is based on the utilization of emission controls, in particular a flare, to reduce emissions from engine blowdowns, a dehydrator, storage tanks, and truck loading. However, while the permit contains some operational requirements for the flare at Section II.B.8, the approval order does not actually establish a VOC emission limit. Although the approval order contains a “Summary of Emissions,” this summary of potential emissions appears to be informational and not a table of actual numerical limits. Further, while the permit established VOC limits for engine exhaust at the compressor station at Section II.B.3.a, it does not establish VOC limits for engine blowdowns, the dehydrator, storage tanks, or truck loading. Accordingly, the approval order does not actually establish a practically enforceable VOC emission limitation.
- On December 13, 2023, Utah issued approval order DAQE-AN161690001-23, authorizing Uinta Wax Operating, LLC to construct and operate the Zager Booster Station, which is located in Duchesne County in the Uinta Basin nonattainment area. See Exhibit 6, DAQ, Approval Order DAQE-AN161690001-23 (Dec. 13, 2023). The approval order authorized new VOC emissions and estimated total VOC emissions to be 29.72 tons per year. This estimate is based on the utilization of emission controls, in particular a combustor and a flare, to reduce emissions from engine blowdowns and storage tanks. However, while the permit contains some operational requirements for the combustor and flare at Section II.B.2, the approval order does not actually establish a VOC emission limit. Although the approval order contains a “Summary of Emissions,” this summary of potential emissions appears to be informational and not a table of actual numerical limits. Further, while the permit established VOC limits for engine exhaust at the compressor station at Section II.B.3.b, it does not establish

VOC limits for engine blowdowns or storage tanks. Accordingly, the approval order does not actually establish a practically enforceable emission limitation.

- On April 28, 2021, Utah issued approval order DAQE-AN14436008-21, authorizing Kinder Morgan Altamont LLC to modify the Ravolla Compressor Station, which is located in Duchesne County in the Uinta Basin nonattainment area. See Exhibit 7, DAQ, Approval Order DAQE-AN14436008-21 (April 28, 2021). The approval order authorized an increase in VOC emissions and estimated total VOC emissions to be 64.04 tons per year. This estimate is based on the utilization of emission controls, in particular a combustor and flare, to reduce emissions from engine maintenance, a dehydrator, and storage tanks. The permit does not actually contain any operational requirements for the combustor or flare. Further, the approval order does not actually establish a VOC emission limit. Although the approval order contains a “Summary of Emissions,” this summary of potential emissions appears to be informational and not a table of actual numerical limits. Further, while the permit established VOC limits for engine exhaust at the compressor station at Section II.B.7, it does not establish VOC limits for engine maintenance, the dehydrator, or storage tanks. Accordingly, the approval order does not actually establish a practically enforceable emission limitation.

These are just a few of the widespread instances where Utah failed to issue practically enforceable approval orders in the Uinta Basin. The consequence is that the approval orders do not limit VOC emissions as a practical matter and therefore do not comply with the SIP. Further, although many permits were issued prior to the designation of the Uinta Basin as a nonattainment area, the fact that these permits continue to apply is further evidence of Utah’s failure to comply with the SIP.

The failure to include actual limits on emissions also appears to defy the Utah SIP’s requirement that sources meet best available control technology.

Under the SIP, sources obtaining an approval order must control emissions at a level that “is at least best available control technology.” R307-401-8(1)(a). The SIP defines “best available control technology as:

***an emission limitation*** [] based on the maximum degree of reduction for each air pollutant which would be emitted from any proposed stationary source or modification which the director, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant.

R307-401-2 (defining “Best available control technology”) (emphasis added). As is clear, “best available control technology” is an “emission limitation.” Under the SIP, an “emission limitation” is defined as:

a requirement established by the Board, the director, or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction[.]”.

R307-101-2 (defining “Emission Limitation”). In other words, an emission limitation not only includes operational requirements, but an actual limit on the “quantity, rate or concentration” of emissions.

In the subset of permits identified above, the use of combustors and/or flares to reduce VOC emissions from engine maintenance, dehydrators, and storage tanks was identified as best available control technology by Utah. Although the permits establish some operational requirements, they do not contain limits on the “quantity, rate or concentration” of VOC emissions. Accordingly, the permits do not establish an emission limitation that represents best available control technology.

DAQ can only issue an approval order if “[t]he degree of pollution control for emissions [] is at least best available control technology.” R307-401-8(1)(a). The issuance of approval orders for sources of ozone precursor emissions in the Uinta Basin ozone nonattainment area that do not establish best available control technology emission limitations is further evidence that Utah is not complying with the SIP as it applies to the Uinta Basin. Although Utah has certainly not complied with the SIP in relation to the permitting examples cited above, it appears that the failure to assure that approval orders meet best available control technology requirements is widespread in the Uinta Basin.

Again, Utah is not complying with its SIP with regards to the permitting of stationary sources, particular sources that are part of the oil and gas sector, of ozone precursor emissions in the Uinta Basin. It is critical to underscore that 42 U.S.C. § 7511(a)(5) requires compliance with “all” SIP requirements and commitments pertaining to a nonattainment area, not a subset of SIP requirements or a portion of SIP requirements. Further, 42 U.S.C. § 7511(a)(5) is clear that full compliance is required; not partial compliance, not “substantial” compliance, and not an intention of compliance. Improper stationary source permitting, no matter how extensive or egregious, is clearly not in compliance with the SIP. Accordingly, Utah’s improper permitting of stationary sources in the Uinta Basin is grounds for EPA to deny Utah’s request for a second extension of the attainment deadline and to reclassify the Uinta Basin as a moderate ozone nonattainment area.

We urge the EPA to exercise its discretion for good and to put clean air and public health first. If EPA follows through with its proposal, it will literally put the Uinta Basin in clean air purgatory. There will be no deadlines for attaining the NAAQS, no requirement that any additional rules or plans be adopted to further curtail ozone, and there will be no consequences for any ongoing failure to attain. While legally, the EPA

does not appear to have any grounds to grant a second extension of the attainment deadline, we hope EPA simply acknowledges that the state of air quality in the Uinta Basin remains horrible and exercises its authority to deny Utah's request. This will ensure the Uinta Basin continues to have the critical sideboards needed to guarantee the region's ozone will be cleaned up.

Sincerely,



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**Response to Comments on Proposed Extension of the Attainment Date and  
Determination of Attainment by the Attainment Date of the Uinta Basin  
Marginal Nonattainment Area under the 2015 Ozone National Ambient Air  
Quality Standards (EPA-R08-OAR-2024-0001)**

**December 2024**

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## I. Introduction

On April 10, 2024, the U.S. Environmental Protection Agency (EPA) published a notice of proposed rulemaking titled “Extension of the Attainment Date and Determination of Attainment by the Attainment Date of the Uinta Basin (Basin) Marginal Nonattainment Area under the 2015 Ozone National Ambient Air Quality Standards (NAAQS).”<sup>1</sup> If finalized, this proposal would have extended the Marginal area attainment date for this area from August 3, 2022, to August 3, 2023. In addition, the EPA proposed to issue a Determination of Attainment by the Attainment Date, which would have determined that the area attained the 2015 ozone NAAQS by the new extended attainment date of August 3, 2023, based on certified ozone monitoring data from 2020-2022.<sup>2</sup>

The EPA established a public docket for this proposal to ensure that documents and information relevant for support of the proposal would be easily accessible and to support a public notice-and-comment process. In its proposal, the EPA invited the public to participate in the rulemaking process by submitting their written comments on the proposal to docket number EPA-R8-OAR-2024-0001 using [www.regulations.gov](http://www.regulations.gov). The 30-day public review and comment period began on April 10, 2024, the day the notice of proposed rulemaking (NPRM) published, and closed on May 10, 2024. Nine comments were submitted during the public comment period; they are listed in table 1, along with the docket identification number and the identity of the individual or organization that submitted the comment.

**Table 1 - Comments on Proposed Rule (Docket EPA-R8-OAR-2024-0001)**

Comment Identification Number	Commenter
0008	Anonymous
0009	Anonymous
0010	Anonymous
0011	Anonymous
0012	Bryce C. Bird, Director, Division of Air Quality, Utah Department of Environmental Quality (UDAQ)
0013	Rikki Hrenko-Browning - Utah Petroleum Association (UPA)
0015	Member of the public – Richard Spotts
0016	Jeremy Nichols - Center for Biological Diversity (CBD)
0017	Joro Walker, General Counsel, Western Resource Advocates (WRA)

The Clean Air Act (CAA) gives the EPA discretion – “the Administrator *may*” – as to whether to extend an ozone nonattainment area’s attainment date by one additional year on application by any state, if two criteria are satisfied. CAA section 181(a)(5) (emphasis added). See also 40 CFR 51.1307. The two criteria are:

<sup>1</sup> 89 FR 25223 (Apr. 10, 2024).

<sup>2</sup> The extension proposed in April 2024 would have been the second extension granted for the area. In 2021 the State of Utah had requested an initial 1-year extension of the Marginal area attainment date for the Uinta Basin; the Ute Indian Tribe also requested an extension. EPA granted that first extension, making the new attainment date August 3, 2022. 87 FR 60897 (Oct. 7, 2022). On March 29, 2022, the State requested a second one-year extension of the Marginal area attainment date for the Uinta Basin, and on December 20, 2022, the Tribe also requested a second one-year extension.

§ 181(a)(5)(A) the State has complied with all requirements and commitments pertaining to the area in the applicable implementation plan

§ 181(a)(5)(B) no more than 1 exceedance of the national ambient air quality standard level for ozone has occurred in the area in the year preceding the Extension Year

The provision allows a maximum of two 1-year extensions for a single area. In the proposed rule, we explained that the information presented by the State showed that the area met the two necessary statutory criteria for a second 1-year extension under CAA section 181(a)(5). As explained in this *Response to Comments* document, that is still our conclusion. But the two specified criteria in section 181(a)(5) are the minimum requirements necessary for EPA to consider an extension request, not a guarantee that EPA will grant such a request. “While EPA cannot grant an extension request if the conditions are not met, it is not required to do so even if they are.” 62 FR 60001, 60004 (Nov. 6, 1997). As explained below and in the *Final Rule* that this *Response to Comments* document is associated with, after carefully considering comments received, we have concluded that it is appropriate for EPA to use its discretion to deny the request for a second extension of the Marginal area attainment date. As a result, EPA is determining that the area failed to attain by the first extended attainment date, based on certified ozone monitoring data from 2019-2021. Accordingly, the area is reclassified by operation of law on the effective date of this action to Moderate nonattainment for the 2015 ozone NAAQS.

The EPA’s reasoning and conclusions for the final action are based on information in the rulemaking record, which includes the public comments and any additional data the comments may provide. This document contains our detailed responses to the relevant comments submitted.

## II. Comments and Responses

This section of the document addresses comments received related to EPA’s April 2024 proposal. In part A we address comments related to the two criteria in CAA section 181(a)(5), then in part B we address comments that, if correct, would otherwise limit EPA’s discretion to grant an extension. Finally, in part C we address comments related to EPA’s exercise of the discretion afforded it under CAA section 181(a)(5).

### A. Comments Related to the Two Criteria in CAA Section 181(a)(5)

#### A.1. Eligibility for Requesting a 1-year Extension

A.1.a. *Comment:* Commenter (0016) disagreed with EPA’s proposal, claiming that the State of Utah’s two-page request for a second 1-year extension is “deficient.” According to the commenter, it is “implicit” in the CAA that a state seeking an extension “must demonstrate that any extensions are justified and consistent with the criteria” in CAA section 181(a)(5)(A) and (B). The commenter says that Utah’s application, “which is only two pages long, does not demonstrate that a second extension of the attainment date is warranted.” The commenter further asserts that “Utah has not certified compliance” with the State Implementation Plan (SIP), because the State only asserts “that relevant SIP submissions have been approved by EPA.”

*Response:* As discussed further in part C below, EPA agrees with the commenter’s assertion that we should not grant an extension for the area. But we disagree with the reasoning of this comment. The State’s request was not inherently deficient. First, the plain text of the statute requires only an “application” by the State. The commenter cites no case law or other authority for the claim that it is “implicit” in the CAA that this application must include any sort of demonstration. To the extent the commenter is asserting that a two-page application is necessarily insufficient, we disagree. EPA is entitled to rely on a state’s certification that it has met the requirements to obtain an extension: “EPA’s presumptive reliance on state certification is reasonable because it is an efficient allocation of the agency’s limited resources and personnel..., and because EPA retains discretion to look beyond the certification if other evidence gives it reason to doubt the certification’s credibility.” *Delaware Dept. of Nat. Resources and Env’tl. Control v. EPA*, 895 F.3d 90, 101 (D.C. Cir. 2018). The commenter asserts that in this case Utah did not “certify” that it had met all the requirements, because the State specifically mentioned only that EPA had approved what the commenter characterizes as “relevant SIP submissions,” and did not actually assert that it is complying with the SIP. But the commenter ignores the statement in Utah’s letter that it had “met both CAA requirements.” That constitutes a sufficient certification of compliance for EPA’s purposes – neither the statute nor the case law requires that the word “certify” be included. And, consistent with the framework laid out in *Delaware*, EPA has reasonably relied on Utah’s statement of compliance with its SIP.

- A.1.b. *Comment:* Commenter (0013) supported EPA’s proposal to grant the extension, stating that “the Uinta Basin meets all statutory and discretionary criteria.” The commenter provided summaries of air quality and snowfall data in the Basin showing a downward trend in ozone DV over the past decade. The commenter also discussed multiple efforts that require operators to install controls and reduced emissions as required elements of the Uintah and Ouray Oil and Natural Gas Federal Implementation Plan (U&O FIP), the new 40 CFR part 60, subpart OOOOb/c rules, and the Bureau of Land Management’s recently finalized Waste Prevention rule. They also highlighted the voluntary measures that operators continue to use in the Basin.

*Response:* EPA agrees with the commenter that the area met the two minimum statutory criteria for an extension. But as explained in the *Final Rule* and elsewhere in this document, we have decided not to grant the extension as proposed. EPA is not obligated to grant an extension even if the two statutory criteria are met. The statute does not specify “discretionary criteria” for this evaluation, but in the *Final Rule* preamble and part C of this document we have explained the reasoning for our discretionary decision not to grant the requested extension.

A.2. *Compliance with State Implementation Plan*

- A.2.a. *Comment:* Commenter (0016) disagreed with EPA’s proposal, claiming that the State is violating its SIP by allowing companies to claim an exemption to new source review (NSR) permitting under the Utah SIP using a non-SIP rule, and therefore that an extension is not available under section 181(a)(5).

*Response:* As discussed further in part C below, EPA agrees with the commenter's assertion that we should not grant an extension for the area. But we disagree with the reasoning of this comment. Specifically, EPA disagrees with the commenter's assertions of noncompliance with the SIP.

As the commenter explains, Utah rule R307-401-10 has been approved by EPA and incorporated into the Utah SIP. This provision exempts well sites as defined in 40 CFR 60.5430a. While this SIP-approved rule does reference R307-505 for the process for exempt sources to register with the State, EPA disagrees that R307-505 must be SIP-approved for the State to be in compliance with the SIP. The SIP-based exemption at R307-401-10(5) does not rely on the registration requirement at R307-505, and that non-SIP-approved registration requirement operates to narrow the window of availability for the exemption contained in SIP-approved R307-401-10(5). Thus, the only effect of the state-only registration process is to strengthen the SIP. And as a general matter the State may choose to limit the availability of a SIP-approved exemption by layering an additional state-only requirement onto it.

Likewise, the commenter's statement that it is "problematic" that there are other state-only rules applicable to oil and gas sources (at R307-506 through R307-510) is not justified. States may choose to add requirements that are not contained in the SIP. Even to the extent they are reflected in the R307-505 registration requirement, the cited additional requirements at R307-506 through R307-510 do not increase the scope of the exemption that is available under R307-401-10(5).

Finally, the commenter asserts that EPA has not made a CAA section 110(I) analysis of whether the registration requirements interfere with attainment or maintenance of the NAAQS. Such an analysis would be appropriate in approving a SIP submittal; to the extent the commenter contends that EPA should not have approved the SIP submittal containing R307-401-10(5),<sup>3</sup> the time for comment and review of that approval has passed, and the second attainment date extension request is not an available vehicle to challenge the substance of the underlying SIP rules. Instead, the valid question for the extension is whether the State is in compliance with its SIP requirements, and the commenter has identified no SIP provision that the use of a permit exemption under R307-401-10(5) conflicts with.

- A.2.b. *Comment:* Commenter (0016) disagreed with EPA's proposal, asserting that Utah is failing to comply with its SIP requirement that approval orders be "enforceable," including enforceable as a practical matter. According to the commenter, by issuing approval orders without (numeric) emission limitations, but instead "that only contain production or operational limitations," the State is issuing permits "without actual emission limitations" that as a result "are not enforceable as a practical matter." The commenter cites and describes four specific approval orders that it characterizes as "examples where Utah permitted new or modified sources of

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<sup>3</sup> See Approval and Promulgation of Implementation Plans; State of Utah; Revisions to Utah Administrative Code: Environmental Quality; Title R307; Air Quality (87 FR 54898, 54899 Table 1, Sep. 8, 2022).

ozone precursor emissions after the region was designated nonattainment yet failed to properly include any emission limitations to ensure the enforceability of the limits.” The commenter further asserts that EPA has stated that permits must not only “contain a production or operational limitation,” but also “an emission limitation in cases where the emission limitation does not reflect the maximum emissions of the source operating at full design capacity without pollution control equipment.”

*Response:* As discussed further in part C below, EPA agrees with the commenter’s assertion that we should not grant an extension for the area. But we disagree with the reasoning of this comment. First, non-numeric limitations are clearly envisioned under the CAA. An emission limitation is “a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and *any design, equipment, work practice or operational standard* promulgated under this Act.” 42 U.S.C. § 302(k) (emphasis added). Thus, to the extent the commenter is implying that only numeric limits are consistent with the CAA, that is incorrect. Further, non-numeric limits are not inherently unenforceable; EPA can, and does, take enforcement actions based on failures to comply with work practice standards, operational standards, and other non-numeric forms of emission limitations.<sup>4</sup> Finally, to the extent the commenter is asserting that approval orders that do not contain numeric emission limits for volatile organic compounds (VOC) or other pollutants mean that the State is not complying with its SIP, we disagree. Under the approved SIP the State has issued approval orders to oil and gas sources which contain substantive requirements relying largely on specified federal New Source Performance Standards (NSPS) and Maximum Achievable Control Technology (MACT) standards. Where they are applicable to the facilities, those standards are enforceable, and there is no separate requirement that all minor source permits issued in the State contain numeric emission limits for all criteria pollutants.

## **B. Comments that Would Otherwise Limit EPA’s Discretion**

### *B.1. Multi-Jurisdictional Nonattainment Area*

B.1.a. *Comment:* Commenter (0017) opposes EPA’s proposal, claiming that “EPA’s application of CAA section 181(a)(5) to the dual jurisdictions governing the Uinta Basin appears improper.” The commenter asserts that CAA section 181(a)(5) applies only to states, and that “despite the ruling in *Delaware Dept. of Nat. Resources and Env’tl. Control v. EPA*, it appears improper to allow Utah’s request for a 1-year extension to impact all or the Indian Country portion of the Uinta Basin Nonattainment Area (NAA) under EPA jurisdiction, particularly when a majority of the relevant emissions originate in this Indian Country.” The commenter claims that EPA is not authorized to request an extension of the attainment date and should not be allowed to do so

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<sup>4</sup> For example, see EPA’s July 2, 2024 Notice of Violation to Suncor Energy Inc., in which EPA alleges failure “to operate and maintain the source consistent with good air pollution control practices for minimizing emissions,” <https://www.epa.gov/system/files/documents/2024-07/redacted-7-2-2024-suncor-notice-of-violation.pdf>, par. 224.

“by proxy, simply by virtue of Utah’s request,” and that it is “improper for EPA to have the discretion to grant itself an extension of the attainment date.”

*Response:* As discussed further in part C below, EPA agrees with the commenter’s assertion that we should not grant an extension for the area. But we disagree with the reasoning of this comment. CAA section 181(a)(5) lays out the criteria that must be met to be eligible to request up to two 1-year extensions. Section 181(a)(5) does not exclude from its scope nonattainment areas that include Indian country. And as the court found in the Delaware decision the commenter cites, under the plain language of the CAA, “a single state can validly apply for an extension.” *Del. Dep’t of Natural Res. & Env’tl. Control v. EPA*, 895 F.3d 90, 99 (D.C. Cir. 2018). Indian country portions of nonattainment areas were not at issue in that decision, which involved a nonattainment area encompassing parts of several states. But the logic of *Delaware* applies nonetheless, particularly because Section 181(a)(5) does not exclude Indian country from its scope. Also, nothing in the CAA indicates that the percentage of emissions within each jurisdiction that contribute to an area’s nonattainment govern whether a single state can request an extension on behalf of an entire nonattainment area. Therefore, in light of *Delaware* and the plain language of the Act, we do not agree that Utah was ineligible to request an extension for the area.

The commenter also argues that by granting the extension request here the EPA would “by proxy” be requesting and granting itself an extension of the relevant CAA deadlines. But this misunderstands *Delaware* and the plain language of the Act. Under *Delaware*, “a single state can validly apply for an extension.” 895 F.3d at 99. There is no basis in the plain language of the CAA to treat extension requests differently based on EPA’s potential involvement in issuing a Federal Implementation Plan (FIP). Although not specifically addressed by the court, the potential for EPA to issue a FIP for part of the area existed in *Delaware* too, since one of the states involved could have failed to submit a SIP and thus triggered EPA’s FIP authority under CAA section 110(c).

### **C. Comments Related to EPA’s Exercise of Discretion**

In the proposed rule, we explained that the information presented by the State showed that the area met the two necessary statutory criteria for a second 1-year extension under CAA section 181(a)(5). As explained in this document, that is still our conclusion. But “section 181(a)(5) makes clear that the Administrator may exercise reasoned discretion to deny a request for a 1-year extension even where the statutory criteria for an extension are met.” 87 FR 21825, 21830. In this case, as explained below and in the Final Rule, EPA is exercising its discretion to deny the request for a second extension. This section addresses comments related to EPA’s exercise of discretion concerning the request.

The proposed rule stated that EPA had “found no compelling countervailing facts or circumstances that would cause the agency to exercise its discretion to deny the request notwithstanding the State’s demonstration.” As discussed below, in several cases commenters have provided additional information and raised additional considerations that we have considered in determining to deny the request for an extension.

C.1. *Regional air quality*

C.1.a. *Comment:* Commenter (0016) opposes EPA’s proposal, stating that “the agency does not appear to have considered the actual and complete nature of the situation” concerning air quality in the Uinta Basin, including the high ozone levels recorded in 2023. Based on the commenter’s assessment of data from 2014-2023, the commenter asserts that EPA is making an “unfounded assumption that air quality has improved in the Uinta Basin.” The commenter characterizes 2022, which saw no 2015 ozone NAAQS exceedances in the Basin, as “anomalous,” and notes that “[t]he 2023 ozone season was so bad that each monitor in the Uinta Basin recorded dozens of exceedances of the NAAQS.” The commenter states: “[f]ar from ‘one or two bad days,’ the 2023 data shows that ozone levels exceeded the NAAQS on more than 30 days, including virtually the entire month of February. In Duchesne County, 33 exceedances of the NAAQS were recorded and 36 were recorded in Uintah County.”

Another commenter (0017) makes similar statements, referring to “alarmingly elevated levels of ozone recorded in 2023 and over the previous decade,” and stating that “for up to 30 days, 8-hour ozone concentrations in the Uinta Basin NAA exceeded the 2015 standard, topping out at an alarming 119 parts per billion (ppb).” This commenter asserts that the proposed extension would not be based on an identifiable trend toward cleaner air, documented reductions in the emissions of ozone precursors or enforceable controls shown to achieve attainment.

*Response:* For the reasons stated in the *Final Rule* and this *Response to Comments*, we agree with the commenters’ general point that EPA should not grant the second extension. We do not necessarily agree with each of the commenters’ characterizations of air quality in the Uinta Basin, but, overall, after reevaluating the air quality data, emissions trends, and meteorological conditions for the area, we generally agree with these commenters as to the significance of the 2023 ozone levels, and how they should affect EPA’s exercise of discretion here.

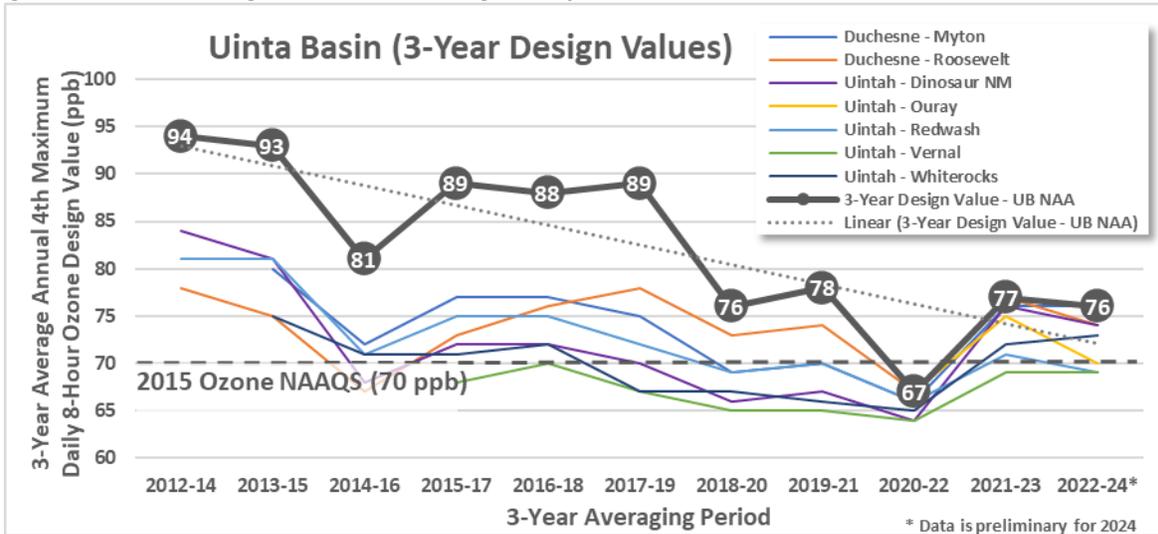
The form of the primary and secondary ozone standard is based on the annual 4th-highest daily maximum 8-hour average concentration, averaged over three years. Figure 2 shows the annual 4<sup>th</sup> maximum value for each regulatory monitor in the NAA. As can be seen, there is certainly significant annual variability in ozone concentrations in the Uinta Basin area, with 2023 being a particularly high ozone year at all monitors. And while we think there is reason to believe that the efforts by Federal, State, Tribal, industry, and other partners to control emissions from the oil and gas sector are having positive impacts on monitored air quality, the high ozone levels in 2023 do indicate that ozone in the area is highly variable, and that unhealthy levels remain possible. Table 2 presents certified data from EPA’s Air Quality System.<sup>5</sup> Based on this data, EPA can confirm that there were 29 days that exceeded the ozone standard in 2023 in Duchesne

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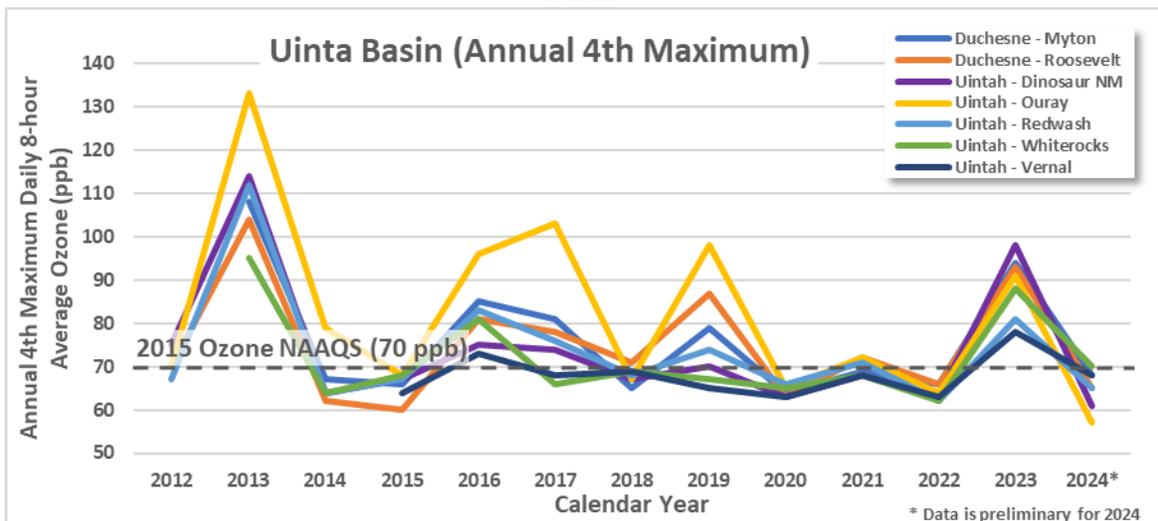
<sup>5</sup> EPA’s Air Quality System is a repository of ambient air quality data that assists in air quality assessments, designations, modeling for permit review and prepare reports for Congress as mandated by the Clean Air Act (<https://www.epa.gov/aqs>). Two Ute Tribal sites (Ouray and Whiterocks) and the Dinosaur NM site were considered non-regulatory from their inception in 2008 through most of 2014 (parts of 2013 and 2014 had regulatory data) while a quality assurance plan was being approved. Because of this, data from these monitors is still deemed appropriate to include for purposes of evaluating ozone trends in the Basin.

County and 33 days in Uintah County, with the highest exceedance value being 0.119 parts per million (ppm) (119 ppb). Accordingly, although the comments contained some incorrect information as to the number of days with exceedances, we agree with the general point that the number as well as the level of exceedances in 2023 was significant and raise concerns about continued attainment of the NAAQS. We have concluded that the CAA’s requirements for attainment planning are necessary to ensure expeditious attainment of the NAAQS and continued maintenance of that standard, in order to protect human health and the environment in this area.

**Figure 1 – 3-Year Design Values for All Regulatory Monitors in the Uinta Basin Nonattainment Area<sup>6</sup>**



**Figure 2 – Annual 4<sup>th</sup> Maximum Daily 8-hour Average Values for All Regulatory Monitors in the Uinta Basin<sup>7</sup>**



<sup>6</sup> See footnote #5

<sup>7</sup> See footnote #6.

**Table 2 – Ozone Exceedances in Uinta Basin Nonattainment Area in 2023**

Site ID	Duchesne County, UT		Uintah County, UT				
	490130002	490137011	490471002	490477022	490471004	490472002	490472003
Parameter Occurrence Code	1	2	1	1	1	1	1
Total # of Days Exceeding 0.0709 ppm in 2023	23	28	29	33	13	12	10
2023 Max Annual Exceedance (ppm)	0.112	0.117	0.119	0.119	0.105	0.101	0.105

The goal of part D of the CAA, which governs planning requirements for nonattainment areas, and the responsibility of states and the EPA under that part of the Act, is to protect public health by driving progress in nonattainment areas toward attainment of the NAAQS as expeditiously as practicable and no later than the attainment dates prescribed by the Act. It is reasonable, in exercising its discretion under section 181(a)(5), for the EPA to consider what current and recent air quality data indicate about the likelihood of attaining the NAAQS, what the impact of EPA’s decision would be on air quality in the area, and in turn how that would affect the existing public health burden in the area. In our proposal to grant the second extension, we acknowledged that the region experienced excessively high ozone values in early 2023, but explained that the high ozone levels that year were not determinative with respect to the decision on the request for a second extension of the attainment date:

EPA acknowledges that preliminary ozone monitoring data indicate that in early 2023, the region experienced excessively high ozone values. While this data was not determinative in proposing to grant the 2nd extended attainment date, it does show that there continue to be periods of high ozone levels in the Basin. Addressing the continuing ozone problem will require continued efforts and steady commitments from state, local, federal, tribal, and industry partners to reduce precursor emissions in the region.<sup>8</sup>

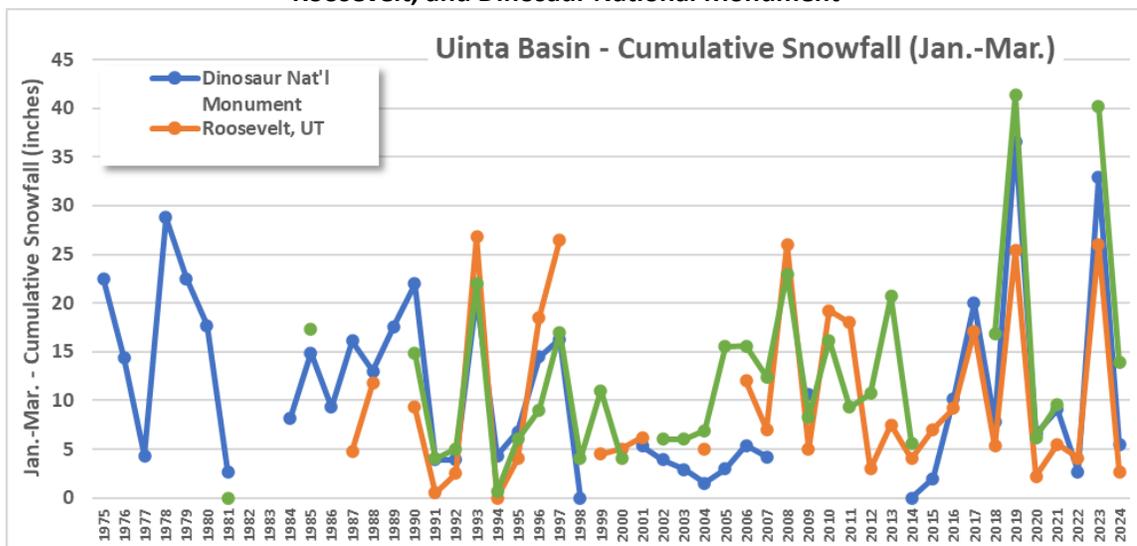
We further described several sources of “reductions EPA expects will significantly mitigate exceedances in the area” including: the U&O FIP, voluntary emission reduction measures, and EPA’s national rulemaking on Oil and Gas New Standards and Emissions Guidelines (OOOb/c).

In response to these commenters, we have re-examined air quality data, emissions information, and meteorological conditions in the Uinta Basin. The high ozone levels in the Uinta Basin in 2019 and 2023 were likely due to considerably higher than average snowfall during these two years (see figure 3). In evaluating snowfall in the Uinta Basin over the past 50 years, 2019 and 2023 had the highest snowfall depths over this 50 year period. These two years also saw annual 4<sup>th</sup> maximum 8-hour ozone values nearing 100 ppb. The primary meteorological variable correlating to the formation of wintertime ozone in the Uinta Basin is the amount of snowfall and the duration of snow cover on the ground and the strength and persistence of cold air pool inversions that are associated with snow cover. In the Uinta Basin, winter ozone formation is

<sup>8</sup> See 89 FR at 25225.

caused by emissions of VOC and nitrogen oxides (NO<sub>x</sub>) reacting in the presence of sunlight and widespread snow cover during temperature inversion conditions to form ground-level ozone. The years with the highest design values (DV) at each regulatory monitor can be correlated with the meteorological conditions conducive to strong inversions with deep and persistent snow cover being present.<sup>9</sup> The unique meteorological and topographic features in the Uinta Basin result in strong and persistent temperature inversions forming over snow covered ground and elevated terrain surrounding a low basin. The stable atmosphere allows emissions to accumulate and react with sunlight, but prevents the emissions from escaping the temperature inversion layer and dispersing, which allows ozone to form.<sup>10</sup> Conversely, in years without these conducive meteorological conditions, local anthropogenic emissions will not create high wintertime ozone concentrations. Additionally, preliminary data from 2024 supports the conclusion that high ozone levels in 2023 were affected by high snowfall that year. In January to March 2024, there was a limited amount of snowfall, which correlates with a 4<sup>th</sup> maximum ozone value of 50 ppb during this time, compared to a 4<sup>th</sup> max of 98 ppb in January to March 2023.<sup>11</sup>

**Figure 3 – Snowfall in the Uinta Basin Vver the Last 50 Years at Vernal, Roosevelt, and Dinosaur National Monument<sup>12</sup>**



On reviewing the exceedance data for 2023 and considering the comments related to this year, we conclude that the 2023 data demonstrates that when emissions are at levels present in 2023 and conducive meteorological conditions (including both strong inversions and snow cover) are present, it will lead to unhealthy levels of ozone in the Basin. And while we are encouraged by ongoing and future efforts to reduce emissions that contribute to the formation of ozone, as

<sup>9</sup> The term design value (DV) is commonly used to refer to the metric for the standard, and is the statistic that describes the air quality of a given location in terms of the indicator, form and averaging time of the standard such that it can then be compared to the level of the standard.

<sup>10</sup> See Regulatory Impact Analysis (RIA) for the U&O O&NG FIP for a more detailed discussion of winter ozone. This can be viewed in Docket ID No. EPA-R08-OAR-2015-0709 at <https://regulations.gov/document/EPA-R08-OAR-2015-0709-0260>.

<sup>11</sup> EPA, Outdoor Air Quality Data, <https://www.epa.gov/outdoor-air-quality-data>.

<sup>12</sup> Source: Western Regional Climate Center; sites 429111 (Vernal, UT), 427395 (Roosevelt, UT), and 422173 (Dinosaur NM), <https://wrcc.dri.edu/>.

discussed elsewhere in this *Response to Comments*, and we expect in particular that the substantial emission reductions from full implementation of the U&O FIP will bring about air quality improvements, we do not have data or other technical information to support a conclusion that those improvements will be enough to end ozone exceedances such as those that the area experienced in 2023.

Without attainment planning, as will be required under CAA section 182(b) for areas classified as Moderate, we cannot be sure that the reductions from recent, ongoing, and planned near-term efforts will be enough to ensure that exceedances will not continue to occur, especially in years that have high snowfall. While the year 2023 may have been at the upper end of levels seen in recent years in terms of the amount of snowfall and the number of days with snow on the ground, snowfall itself is not atypical. It is not, for instance, considered an exceptional event under EPA's Exceptional Event Rule.<sup>13</sup> Additionally, the Clean Air Act recognized that anthropogenic emissions may only lead to high pollution levels under certain conducive meteorological conditions, and for this reason explicitly excludes strong atmospheric inversions, such as the conditions that result from heavy snow cover in the Uinta Basin, from qualifying as exceptional events. See CAA section 319(b)(1)(B)(i). Therefore, air quality planning (including an attainment demonstration) should be performed, and should take the possibility of wintertime snowfall into consideration, so that the agencies can determine the level of emission reductions necessary to attain the standard in this area even in years with meteorological conditions conducive to ozone formation.

- C.1.b. *Comment:* Commenter (0017) opposed EPA's proposal, claiming that the proposed extension would not be based on an identifiable trend toward cleaner air, documented reductions in the emissions of ozone precursors or enforceable controls shown to achieve attainment.

*Response:* For the reasons stated in the *Final Rule* and this *Response to Comments*, we agree with the commenters' general point that EPA should not grant the second extension. As to the comment's reference to "enforceable controls shown to achieve attainment," we agree that due to the area's classification as Marginal, the area has been exempt from the CAA nonattainment requirement to have an attainment plan that demonstrates attainment of the NAAQS. See CAA section 182(a) ("The requirements of [the Marginal classification] shall apply in lieu of any requirement that the State submit a demonstration that the applicable implementation plan provides for attainment of the ozone standard by the applicable attainment date in any Marginal Area."). And as discussed above, comments received on the lack of an attainment demonstration SIP in the Basin, and the associated enforcement mechanisms that come with an approved SIP, are among the reasons EPA is denying the extension. EPA disagrees, with the implication that documented and enforceable reductions in emissions of ozone precursors are requisite for states to qualify for a 1-year extension of the attainment date, but we agree that under these factual

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<sup>13</sup> See *Final Rule, Treatment of Data Influenced by Exceptional Events*, (81 FR 68216, Oct. 3, 2016), and see EPA's Best Practices for Preparation of Multi-Agency Exceptional Events Demonstrations, April 12, 2017, [https://www.epa.gov/sites/default/files/2017-06/documents/best\\_practices\\_multi-air-agency\\_ee\\_demos\\_final.pdf](https://www.epa.gov/sites/default/files/2017-06/documents/best_practices_multi-air-agency_ee_demos_final.pdf).

circumstances, commenters have raised a legitimate concern that expeditious attainment of the NAAQS may not be served by granting an extension. Denying the extension request will result in reclassification to Moderate, which will require an attainment demonstration to be developed, among other CAA requirements. Application of those requirements includes development of an attainment demonstration that will allow the agencies involved to accurately assess whether controls EPA identified within our proposal will result in timely and continued attainment of the NAAQS, or whether additional controls are required.

- C.1.c. *Comment:* Commenter (0017) disagreed with EPA's proposal to determine that the area attained by the attainment date, stating that EPA should not use 2020-2022 data, and that monitored values for 2020 and 2021 are not characteristic of concentrations in the NAA, because oil and gas development in the Uinta Basin, and therefore emissions from this activity, were uncharacteristically low due to the pandemic. The commenter stated that EPA's planned action does not demonstrate that ozone concentrations in the Uinta Basin will remain low based on concrete emission reductions or air quality trends that showed consistent progress toward attainment. The commenter further states that they believe that attainment is based on a DV that no longer includes 2019, when the relevant monitored value for the Basin was 98 ppb. They claim that EPA's argument for a finding of attainment based on a DV for the years 2020-2022 is contrary to the CAA's goal of protecting public health and instead relies on serendipity.

*Response:* For the reasons stated in the *Final Rule* and this *Response to Comments*, we agree with the commenters' general point that EPA should not grant the second extension. As to the comment's assertion that "EPA's argument for a finding of attainment based on DVs from the years 2020-2022 is contrary to the CAA's goal of protecting public health and instead relies on serendipity," we note that the CAA mandates the specific years that are to be used in determining whether an area attained. CAA section 181(b)(2)(A) requires that the EPA determine whether an area attained by the attainment date "based on the area's DV (as of the attainment date)."<sup>14</sup> The DV, as defined and explained in 40 CFR part 50, Appendix U, refers to the metric that is used to compare ambient ozone concentration data measured at a site in order to determine compliance with the NAAQS. Per 40 CFR 50.19, the 2015 ozone NAAQS is met when the 3-year DV is less than or equal to 70 ppb (i.e., 0.070 ppm). In addition, as discussed in the *Final Rule* and this *Response to Comments*, under the CAA and EPA's regulations, the Uinta Basin's DV for the relevant time period in the proposed rule (i.e., the 2020-2022 DV, for an attainment date in 2023) showed that the NAAQS would be met, were EPA to grant the extension.

However, in this final action, EPA is denying the request for an extension after close examination of factors impacting air quality in the Uinta Basin. We have determined that there is uncertainty about whether the current and expected level of controls will be sufficient to achieve continued

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<sup>14</sup> See 87 FR 60902.

attainment in the area, and that granting the extension could result in impeding expeditious and continued attainment of the NAAQS, rather than progress towards that goal.

- C.1.d. *Comment:* Commenter (0016) opposes EPA's proposal because they claim that EPA only looked at 2 of 7 monitors in the NAA. The commenter claimed that "Although EPA may have discretion to review monitoring data beyond that referenced and/or submitted by a state, in this case the agency has relied on Utah's submission to conclude that monitoring data justifies an extension of the attainment date."

*Response:* EPA disagrees with the commenter's assertion that the agency only looked at two of seven monitors in the region. As discussed and shown in table 2 of the proposed action, all seven regulatory monitors were evaluated as part of the determination on whether to grant the extension. This includes two monitors operated by the State of Utah, four monitors operated by the Ute Indian Tribe, and one monitor operated by the U.S. National Park Service.

## C.2. *Planning Requirements*

- C.2.a. *Comment:* Commenters (0016) and (0017) oppose EPA's proposal, claiming that "EPA and Utah will be off the hook for developing enforceable plans" and "it will literally put the Uinta Basin in clean air purgatory." The commenters claim that there will be no deadlines for attaining the NAAQS, no requirement that any additional rules or plans be adopted to further curtail ozone, and no consequences for any ongoing failure to attain.

*Response:* EPA does not disagree with the commenters that the area would remain in a type of "purgatory," in the sense of being in a state without a clear resolution in the near term.<sup>15</sup> If the extension is granted, the area would remain a Marginal nonattainment area, which would still be subject to CAA air quality protection requirements, including a 100 tons per year (tpy) major source threshold, 1.1:1 NSR offsets, and submittal of periodic emissions inventories, but the State of Utah would not be required to implement tighter controls or contingency measures under CAA section 182 based on violating air quality data, nor would the area be subject to future attainment dates. The EPA does maintain the ability to implement FIPs on Indian country, though. The most recent plan, the U&O FIP, was finalized in 2022, has begun to achieve timely reductions from sources on Indian country lands within the Uinta Basin, and will continue to do so. The implementation deadline under the U&O FIP was February 6, 2024, with the first triennial emissions inventory deadline in 2024.

As one commenter (0017) highlights, a majority of emissions in the NAA are from sources on Indian country lands. Accordingly, EPA expects the existing U&O FIP to result in significant air quality improvements in the nonattainment area. Moreover, the EPA has the authority and obligation to issue additional FIP requirements or update the U&O FIP, if doing so is necessary or appropriate to protect air quality.<sup>16</sup> EPA continues to monitor the effectiveness of current

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<sup>15</sup> The phrases "off the hook" and "clean air purgatory" do not have specific meaning under the Clean Air Act and EPA regulations, and we would disagree with some possible interpretations of those phrases.

<sup>16</sup> See 40 CFR 49.11(a); see also CAA section 301(d).

regulations, including the U&O FIP, to evaluate whether more requirements need to be applied to sources in the NAA. Additionally, the State of Utah is continuing to explore new rules to reduce emissions from oil and gas, independent of planning obligations under subpart 2 of the CAA. Furthermore, with the finalization of EPA's Emission Guidelines for Greenhouse Gas Emissions from Existing Crude Oil and Natural Gas Facilities, also known as subpart OOOOc, the State of Utah is in the process of developing a plan to comply with these new regulations.<sup>17</sup>

While EPA believes these ongoing efforts by the State and through the implementation the U&O FIP will result in meaningful emission reductions in the Uinta Basin, commenters highlighted the effect that granting the extension would have on EPA's ability to determine whether further measures would be necessary to ensure sustained attainment in the area. Therefore, and as discussed above in response to other comments, we agree with the substance of the commenters' concern that granting the extension would place the area in a legal status that could ultimately impede timely and sustained attainment of the NAAQS.

- C.2.b. *Comment:* One commenter (0013) stated that finalizing the *Determination of Attainment by the Attainment Date* (DAAD) does not re-designate the area to attainment, and stated that to be redesignated to attainment, the Uinta Basin must meet several additional requirements, including: EPA must determine that the improvement in air quality is due to permanent and enforceable emission reductions; EPA must fully approve a maintenance plan including contingency measures to be triggered if the area falls back out of attainment; and the initial maintenance plan must demonstrate that the area will continue to attain the standard for 10 years after EPA redesignates the area to attainment. The commenter also requested that "EPA work closely with UDAQ and the Tribe to develop and approve a maintenance plan for the Uinta Basin" to "eliminate any future uncertainty for operators and the agencies."

*Response:* EPA agrees with the commenter that the proposed DAAD would not have constituted a redesignation to attainment. The comments about the requirements for redesignation are beyond the scope of this action. We note that, as other commenters pointed out, if the area were granted the second extension and subsequent DAAD, the air quality planning and control requirements associated with Moderate nonattainment status would not take effect, even if air quality in the Basin continued to exceed the standard or otherwise worsen. In that situation, the State would also be ineligible to submit a maintenance plan until ozone levels were back under the standard, potentially leading to a situation where air quality could continue to violate the NAAQS without consequences such as mandatory reclassification, implementation of contingency measures, or required submittal of an attainment demonstration SIP. While EPA is optimistic that the area will attain the NAAQS and remain in attainment through the emission reduction efforts to date, given present information and the lack of an attainment

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<sup>17</sup> A new national FIP is being developed for implementing this regulation on Indian Country where the Tribe(s) do not develop a Tribal Implementation Plan.

demonstration, we cannot be certain that this will occur. Accordingly, and as explained in the *Final Rule* and the remainder of this *Response to Comments*, we are denying the request.

- C.2.c. *Comment:* The UDAQ commented that they intend to continue to work on regulatory strategies to address further oil and gas emission reductions that are effective and reasonable, and expressed the State’s commitment to engaging industry and local stakeholders as it continues to coordinate with EPA Region 8 and the Ute Tribe on these strategies.

*Response:* EPA acknowledges this comment and appreciates the State of Utah’s commitment to continued emission reductions in the nonattainment area. And while this final action is not what the State supported in their comments, we are committed to continued coordination and collaboration with the State on the development of an attainment demonstration SIP for the Basin and engage on further research efforts aimed at improving modeling and identifying control strategies.

C.3. *Regional Oil and Gas Activity and Regulatory Efforts to Reduce Emissions*

- C.3.a. *Comment:* Commenter (0017) opposes the proposal and asserts that EPA ignores growing oil and gas production and ongoing issues and delays with environmental standards and compliance that are critical in assessing whether the area will comply with the 2015 Ozone NAAQS in future years.

*Response:* We disagree that the EPA is ignoring growing oil and gas production. We agree that the emissions associated with oil and gas production in the area contributed to continued air quality problems which is among the reasons we are denying the request for an attainment date extension.

The 2022 U&O FIP was developed in part to provide for VOC emission reductions in amounts that would more than offset the expected growth in emissions from additional oil and gas production in the area.<sup>18</sup> The purpose of the U&O FIP is to “ensure that [VOC] emissions reductions will be achieved that will ensure that new development ...will not interfere with attainment of the NAAQS.” The compliance Under the rule, the compliance deadline for existing sources was in 2024, and based on those deadlines, EPA expects that the majority of emission reductions required by the U&O FIP to take effect before the winter 2024-25 ozone season in the Uinta Basin. In addition to the significant VOC emissions control requirements in the U&O FIP, sources in the Uinta Basin are subject to federal regulations, including EPA’s revised NSPS for new and existing oil and gas sources.<sup>19</sup>

We expect that these regulatory requirements will lead to ongoing reductions in emissions from oil and gas operations, with resulting improvements in air quality in the nonattainment area. Additionally, EPA will be reviewing periodic emissions inventories collected under the U&O FIP,

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<sup>18</sup> See Final Rule, Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah, 87 FR 75334, 75337 (Dec. 8, 2022).

<sup>19</sup> See 40 CFR part 60, subparts OOOOb and OOOOc.

as well as evaluating other air quality data in the Basin. This ongoing review effort is meant to ensure that the U&O FIP is meeting its stated objectives of reducing emissions and identifying additional areas that may require additional controls in the future.

Despite these efforts, we acknowledge that the U&O FIP did not include an attainment demonstration and was not designed to ensure attainment of the 2015 ozone NAAQS. Nor do EPA's revised NSPS requirements necessarily ensure attainment. Under the CAA's NAAQS framework, planning is key to ensuring that the standards are attained – particularly in an area such as the Uinta Basin, which has recently (i.e., in 2023) experienced very high ozone levels. Granting a second extension for this area would have the effect of the area remaining in Marginal nonattainment status indefinitely, without any requirement to plan for attainment should the area continue to violate the NAAQS.<sup>20</sup>

In EPA's view, “[t]he underlying premise of an extension is that an area already has in place a control strategy adequate to attain the ozone standard and that no additional measures are necessary.” 62 FR 46229. Declining to grant the second extension of the attainment date for the area will ensure that a control strategy is developed, through the SIP process and through implementation of the EPA's Indian country air protection responsibilities under 40 CFR 49.11.

Accordingly, and for the reasons further explained in the *Final Rule* and this *Response to Comments* document, EPA is denying the second 1-year extension.

- C.3.b. *Comment:* Commenter (0013) supported EPA's proposal but urged EPA to finalize this approval as soon as possible, claiming that operators in the Uinta Basin and State regulators will remain in a state of uncertainty until finalized. The commenter stated that if EPA were to “reverse the extension approval,” air quality planners would lose planning time to develop required SIP elements.

*Response:* As explained in the *Final Rule* and elsewhere in this document, we have decided not to grant the extension as proposed.

EPA agrees with the commenter that timely action is important, as is certainty for operators and regulators – we would add that certainty is important for the public and the Tribe as well. In addition to certainty, however, other concerns are relevant to this action, as discussed in the preamble to the *Final Rule* and this *Response to Comments*. In particular, along with the benefits of prompt action, EPA must consider the health and air quality concerns that are paramount in the CAA<sup>21</sup> and that have been raised by commenters.

With respect to the commenter's concern about developing required SIP elements, we note that as stated in the *Final Rule*, EPA will address deadlines under the new classification in a separate rulemaking that is subject to notice and comment. This action, along with the separate

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<sup>20</sup> See 83 FR 63003 (establishing implementation requirements, including planning deadlines, for the 2015 ozone NAAQS).

<sup>21</sup> See, e.g., 42 U.S.C. § 7401(b)(1) (listing first, among the purposes of the CAA, “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”).

rulemaking about deadlines, will give advance notice of forthcoming requirements, and some degree of certainty about those requirements, to operators, regulators, the public and Tribe. In addition, we expect that EPA will be on a similar schedule to develop planning elements for the Indian country portions of the nonattainment area, in accordance with its authority and obligation to protect air quality in Indian country.<sup>22</sup>

- C.3.c. *Comment:* The UDAQ commented that they supported EPA's proposal, expressing concern about the complications that would be faced by the State were the area bumped up to Moderate. The commenter stated that the Uinta Basin is a "complex multijurisdictional airshed with regulatory authority shared by UDAQ, the Ute Tribe and EPA and multiple land management agencies, creating unique challenges to meet CAA requirements." The commenter asserts that "[t]he EPA does not have to meet the same regulatory requirements or deadlines as the State of Utah," and that it "would be extremely difficult for UDAQ to meet the CAA requirements on their own with the small percentage of emissions under our [the State's] jurisdiction and facing negative consequences if unable to meet the full requirements and deadlines." Further, the UDAQ noted that, "the Uinta Basin is a remote rural area with unique topography, leading to cold weather conditions and one main sector of emission sources that are the primary contributors of ozone precursor emissions, some aspects of the CAA are not conducive to the best regulatory paths to improving and maintaining good air quality in the area. It is important to allow co-regulatory agencies to have the flexibility to continue to focus on better understanding the emission inventory, the unique chemistry of how ozone is formed in the wintertime and focusing on the most impactful emission reductions."

*Response:* EPA acknowledges the UDAQ's concerns and agrees with their view that air quality regulation in the Uinta Basin is unique. However, as explained in the *Final Rule* and elsewhere in this document, we have decided not to grant the extension and are committed to maintaining a similar schedule to the State in developing planning elements for the Indian country portions of the nonattainment area. As is our practice and consistent with the CAA framework of cooperative federalism, EPA intends to support UDAQ in its planning efforts to address the air quality needs of this area. As to EPA's responsibility, the agency has an air quality protection obligation for Indian country under CAA section 301(d) and 40 CFR 49.11(a), which persists regardless of the area's attainment status or whether an extension has been granted by the EPA.<sup>23</sup>

EPA also acknowledges that within the Uinta Basin, approximately a third of the ozone precursor emissions are from oil and gas sources on located State land with the other two-thirds of

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<sup>22</sup> See 40 CFR 49.11(a).

<sup>23</sup> In accordance with its obligation to protect air quality in Indian country, the EPA has previously promulgated the U&O FIP (see *Final Rule, Federal Implementation Plan for Managing Emissions From Oil and Natural Gas Sources on Indian Country Lands Within the Uintah and Ouray Indian Reservation in Utah*, 87 Fed. Reg. 75334, 75337 (Dec. 8, 2022)). The substantial emission reductions anticipated from that plan are starting to take effect this year, and we expect that they will promote attainment, but that FIP was not developed as an attainment plan, and so under the new classification further attainment planning efforts will be necessary.

precursor emission being from sources on Indian country. While this demonstrates a need to continue emission reduction efforts on Tribal land, it does not mean that there are not still emissions that can, and should, be evaluated and further controlled on State land. EPA will continue to work with the State and the Tribe to develop implementation plans that ensure air quality standards are met and that public health and the environment are protected.

- C.3.d. *Comment:* Commenter (0017) opposes EPA's proposal due to a concern about increased truck traffic due to oil and gas activity. The commenter brings up the Uinta Basin Railway and states that "Utah's oil industry has been working on loadout facility expansion projects that would allow for a big increase in trucking traffic in the area and increase export capacity nearly to the level the rail project would have been able to accommodate, with significant negative air-quality impacts."

*Response:* EPA acknowledges that oil and gas activity can contribute to air pollution and is a focus of many local and national efforts to reduce emissions from this sector. However, having oil and gas activity in a NAA does not disqualify a region from requesting an attainment date extension if the area meets all criteria for such a request.

- C.3.e. *Comment:* Commenter (0017) opposed EPA's proposal due to enforcement actions uncovering violations of regulations in the Basin. The commenter stated that, "UDAQ's 2022 Air Quality Annual Report notes that it conducted joint inspections with EPA "of numerous oil and gas facilities in the Uinta Basin finding violations of environmental laws. These violations resulted in UDAQ and EPA issuing joint notices of violations against the companies and ultimately settling the cases in 2022."

*Response:* EPA is concerned about CAA violations in the Basin and acknowledges EPA and State enforcement efforts in the area. Violations can contribute to excessive emissions in the Uinta Basin, and enforcement is an important component of air quality regulations. The fact that violations were discovered is an example of effective enforcement, which we expect to lead to higher compliance rates and lower emissions.

- C.3.f. *Comment:* Commenter (0017) opposes EPA's proposal due to a claim that the U&O FIP reductions are unproven. The commenter states, "there is nothing in the record to suggest that any emission reductions from the U&O FIP will be sufficient to counter the significant increase in production in the Uinta Basin." They also complain that "elevated ozone levels from 2023, increased production and significant development pressure indicate that reliance on the U&O FIP alone or in tandem with other measures is not enough to warrant granting the extension, finding attainment, and forgoing the obligations otherwise required by a Moderate SIP.

*Response:* EPA agrees with the commenter's assertion that we should not grant an extension for the area. But we disagree with the reasoning of this comment.

EPA disagrees with the commenter that the efficacy of the U&O FIP must be proven in order to grant the extension or determine that the area attained by the attainment date. This is not a

required criterion for either of the proposed actions, and relying on such a demonstration would only further delay EPA in fulfilling its CAA-mandated obligation to determine whether an area attained by its attainment date. Further, in promulgating the U&O FIP EPA already concluded, based on an extensive record including public comments, that reductions from the FIP would more than make up for emissions from expected production increases:

... development of new and modified true minor oil and natural gas sources would need to occur at over 90 times the current pace of development to consume the annual headroom that full compliance with this FIP is expected to generate. With this reevaluation, we continue to support the conclusion that the reductions achieved by this FIP will create more than enough headroom for the current or higher rates of development for years to come while first and foremost improving ozone air quality. We plan to periodically reevaluate our assumptions in the future based on changes in the pace of development and may take additional actions to protect air quality as necessary or appropriate.<sup>24</sup>

EPA maintains the ability to expand the requirements of the U&O FIP in the future if data suggests more reductions are needed to keep the region in attainment.

C.3.g. *Comment:* Commenter (0017) expressed concern with the finalized methane rules (see 89 FR 16820, Mar. 8, 2024), claiming that there is nothing in the record to suggest that any emission reductions from the rule will be sufficient to counter the significant increase in production in the Uinta Basin. They claim that under the new rule, standards for existing sources will take years to come “in effect.” Specifically, they claim that under the methane emissions standards, states have two years to submit their proposal to EPA and EPA has up to one year to complete its review. If EPA rejects a state’s submission, EPA must then propose and finalize a federal existing source standard for that state. Thus, it could take four to five years or more before every state standard is in effect. And this timeline does not account for the potential of protracted litigation over EPA’s decision to grant or deny a state submission or a subsequent federal standard.

*Response:* EPA disagrees with the commenter that the efficacy of the recently implemented OOOOb/c must be proven in order to grant the extension or determine that the area attained by the attainment date. These are not required criteria for either of the proposed actions, and relying on such a demonstration would only further delay EPA in fulfilling its CAA-mandated obligation to determine whether an area attained by its attainment date.

#### C.4. *Environmental Justice*

In the proposed rule, we explained that we had considered specific information related to environmental justice, and we proposed to find that that information “[did] not weigh against our proposal to grant the request.” The information considered consisted of an EJScreen analysis for Duchesne and Uintah Counties, which encompass the entire Uinta Basin nonattainment area,

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<sup>24</sup> 87 FR at 75363 (footnote omitted).

along with the ozone design values for the area. 89 FR at 25227-25228, 25288 n. 24. As discussed below, commenters have raised additional concerns and provided additional information in this area.

C.4.a. *Comment:* Commenter (0017) opposes an extension of the attainment date, and states that EPA did not adequately evaluate Environmental Justice (EJ) and how the proposed actions might adversely impact pollution-burdened, underserved, and Tribal communities, or how any impact might be avoided, minimized or mitigated. The commenter claims that it is up to EPA to also consider any statewide environmental disparities and to provide just treatment to which these individuals and communities are entitled. They claim that EPA did not indicate disproportionate exposure or burdens with respect to non-ozone environmental indicators and that EPA did not explain why it did not consider the EJ ozone index, which the commenter claimed was “the very index that is most germane to the proposed extension.” They also claimed that the EJScreen data demonstrate that the people of Duchesne and Uintah counties, including those living the closest to the sources of ozone pollution, are being disproportionately impacted by ozone pollution and, as a result, are suffering disproportionately adverse human health and environmental effects and risks and that it underscores that communities in the Uinta Basin NAA are disproportionately impacted by ozone to the degree that EPA’s failure to admit, consider and address these disparities conflicts with the agency’s obligation to justly treat and protect the health and well-being of these communities. The commenter also claims that the record makes clear that EPA has not taken “immediate and affirmative steps to incorporate EJ considerations into their work, including assessing impacts to pollution-burdened, underserved and Tribal communities in regulatory development processes and considering regulatory options to maximize benefits to these communities.”

*Response:* EPA disagrees with the commenter’s contention that the EPA did not adequately evaluate EJ as part of its proposed action on Utah’s request for a second one-year extension of the attainment date. We note that we are denying the State’s request in this action.

As commenters point out, the EJScreen tool is useful as an initial indicator of whether the EPA should conduct further review to understand whether, within a screened area, there are communities with potential equity or EJ concerns that may be experiencing disproportionate ozone or other pollution burdens. More specifically, to calculate a specific EJ Index, EJScreen uses a formula to combine a single environmental factor, such as ozone, with the demographic index that averages low-income populations and populations of people of color within the screened area. The Supplemental Indexes use the same EJScreen methodology but incorporate a five-factor supplemental demographic index that averages percentages of low-income persons, persons with disabilities, limited English proficiency, less than high school education, and low life

expectancy. Thus, the EJScreen EJ Indexes and Supplemental Indexes inform the EPA's evaluation of whether to conduct further review of potential disproportionate burdens on communities and explore whether the agency has any authority within the action to address EJ concerns within the respective area being evaluated.

EPA followed a process here that is consistent with the EJ evaluation EPA conducted for the first 1-year extension. As discussed in the proposal, as part of the screening analysis to evaluate whether communities in the Uinta Basin area could be exposed to disproportionate pollution burdens as a result of the proposed grant of the extension request, we used EJScreen version 2.2. An updated version of the tool came out in June 2024 and the administrative record includes the EJScreen version 2.3 reports for Uintah and Duchesne Counties that EPA used in developing this final action.

Beyond EJScreen, we examined ozone DV data for the Uinta Basin area, which in accordance with footnote 24 of the proposal we consider an "informative indicator of pollution burden from ozone in the Uinta Basin area." The DV metric's longer time frame (3 years, as compared to 1-year time frames within EJScreen), provides a more comprehensive understanding of overall ozone conditions, including the consideration that ozone-related health burdens can develop and worsen over multiple years of exposure. The shorter-term dataset utilized for the EJScreen ozone indicator is one reason the EPA relies more heavily on the DV metric to understand ozone burdens in a screened area when assessing EJ considerations in our evaluation of requests for extensions of attainment dates in a given nonattainment area. But the EJScreen information retains relevance in this analysis, particularly with respect to understanding the socioeconomics of surrounding communities and the existing distribution of environmental and health burdens.

With respect to Tribal communities, we acknowledge that the Tribe also requested the extension. Our responsibilities to consider the health effects of this action on individual Tribal members are separate, however, from our goals and responsibilities with respect to the Tribe as a sovereign nation. And as is the case with other persons in the nonattainment area, concerns about ozone-related health impacts on Tribal members in the area are part of the basis for our decision to deny the request for an extension of the attainment date.

- C.4.b. *Comment:* Commenter (0013) disagreed with EPA's EJ evaluation, claiming that the criteria EPA used in its proposal are not appropriate for evaluating requests to extend ozone attainment dates. The commenter disagrees with EPA's proposal to use non-ozone environmental indicators to evaluate actions related only to ozone.

*Response:* EPA disagrees with the commenter that, in this instance, EPA's EJ evaluation was not appropriate. In this case, the statute has provided the Administrator a discretionary authority in the attainment date extension provisions. As a result, given

the circumstances of this nonattainment area, we think it is reasonable to consider all available data related to the existing environmental burden in the area in question, and what impact our action may have on that burden.

Consideration of the existing pollution burden borne by the population that will be impacted by our action is a relevant factor of reasoned decision making. Thus, as discussed in response to comment C.4, the EPA performed screening analyses to better understand the pollution burdens borne by the population that will be affected by the requested extension in order to fully understand the potential public health ramifications of the extension.

C.4.c. *Comment:* Commenter (0017) discusses elevated asthma as depicted in the maps in Exhibit C of their comments.

*Response:* EPA acknowledges that there is a relationship between ozone and asthma, which is discussed in detail in the Ozone Regulatory Impact Analysis developed during the 2015 NAAQS review, which resulted in the tightening of the standard from 75 ppb to 70 ppb.<sup>25</sup> While asthma is an important health concern, its prevalence is most relevant in setting the form and the level of the ozone standard and is not data that is directly considered in determining whether an area is complying with the ozone NAAQS. But the potential impact of ozone pollution on persons with asthma is a significant concern. As the commenter notes, screening information indicates that areas within the Uinta Basin experience a higher incidence of asthma compared to other areas of the state and country.<sup>26</sup> Based on EPA's understanding of the relationship between ozone and asthma, we have concluded that EPA's final action is consistent with the public health protection purpose of the statute. We anticipate that the ozone precursor emission reductions that will be required by the CAA as a result of this final action and attainment of the NAAQS would have a positive impact on area asthma rates. Timely attainment of the ozone NAAQS also serves to ensure that communities in the Uinta Basin are not exposed to disproportionate health and environmental burdens. Ozone is associated with multiple negative health effects; we expect that this decision will help reduce these effects in the communities in the Uinta Basin.<sup>27</sup>

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<sup>25</sup> EPA, Regulatory Impact Analysis of the Final Revisions to the National Ambient Air Quality Standards for Ground-Level Ozone, Sept. 2015, <https://www.epa.gov/sites/default/files/2016-02/documents/20151001ria.pdf>.

<sup>26</sup> Utilizing EJScreen 2.3, for Uintah County, the asthma health indicator is at the 94th percentile compared to the state and the 83rd percentile compared to the U.S; for Duchesne County, the asthma health indicator is at the 85th percentile compared to the state and the 69th percentile compared to the U.S.

<sup>27</sup> See EPA's 'Health Effects of Ozone Pollution' at [www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution](http://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution).



May 22, 2024

Jared Crosby  
Utah Division of Air Quality  
195 North 1950 West  
Salt Lake City, UT 84116  
[Jaredcrosby@utah.gov](mailto:Jaredcrosby@utah.gov)

**Re: Comments on Draft Title V Permit, Kinder Morgan Altamont LLC, Altamont South Compressor Station, Permit No. 1300041005, Duchesne County, Utah**

Dear Mr. Crosby:

Enclosed, please find comments from the Center for Biological Diversity on the Utah Division of Air Quality's draft Clean Air Act Title V Operating Permit for Kinder Morgan Altamont LLC's Altamont South Compressor Station in Duchesne County. As explained in the enclosed comments, the draft permit fails to comply with Title V of the Clean Air Act. Accordingly, the draft Title V permit cannot be issued and must be denied.

The Center for Biological Diversity is a nonprofit, 501(c)(3) conservation organization. The Center's mission is to ensure the preservation, protection, and restoration of biodiversity, native species, ecosystems, public lands and waters, and public health through science, policy, and environmental law. Based on the understanding that the health and vigor of human societies and the integrity and wildness of the natural environment are closely linked, the Center works to secure a future for animals and plants hovering on the brink of extinction, for the ecosystems they need to survive, and for a healthy, livable future for all of us.

Fundamentally, our concerns over the adequacy of the Altamont South Compressor Station draft Title V permit center over the failure of the oil and gas industry to be held fully accountable to protecting clean air, public health, and complying with all applicable air quality requirements. The Altamont South Compressor Station is located in the Uinta Basin of northeast Utah, a region that is struggling to comply with health-based air quality standards for ozone. The Altamont South Compressor Station is a major potential source of ozone forming pollution, yet the draft Title V permit does not assure that this pollution is kept appropriately in check.

As written, the draft permit does not assure compliance with applicable requirements, is unenforceable, does not require sufficient monitoring, and overall does not ensure Kinder Morgan effectively operates the compressor station in a manner that protects the clean air that people need to breathe.

Thank you for the opportunity to comment. Please direct all responses to these comments to me via email at [jnichols@biologicaldiversity.org](mailto:jnichols@biologicaldiversity.org). If you would like to discuss these comments in more detail, please call me at (303) 437-7663 or email. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Nichols', is positioned above the typed name.

Jeremy Nichols  
Senior Advocate  
Center for Biological Diversity

Cc: U.S. Environmental Protection Agency, Region 8

*TECHNICAL COMMENTS*  
*Prepared by the Center for Biological Diversity*

**Draft Clean Air Act Title V Operating Permit,  
Kinder Morgan Altamont LLC, Altamont South Compressor Station  
Permit No. 1300041005, Duchesne County, Utah**

*May 22, 2024*

The Center for Biological Diversity provides the following technical comments on the Utah Division of Air Quality's ("DAQ's") draft Clean Air Act Title V operating permit (hereafter "draft Title V permit") for Kinder Morgan Altamont LLC's (hereafter "Kinder Morgan") Altamont South Compressor Station (hereafter "Altamont South"), Permit No. 1300041005.

The draft permit is a significant modification to Kinder Morgan's existing Title V permit for Altamont South. Significant permit modifications are subject to the same public participation and review requirements as are applicable to permit issuance and permit renewal. See 40 C.F.R. § 70.7(e)(4). Accordingly, these comments are not limited just to the significant modification triggering the proposed permitting action.

The Altamont South Compressor Station is located in the Uinta Basin ozone nonattainment area, a region that continues to violate health-based national ambient air quality standards ("NAAQS") for ground-level ozone. The Compressor Station is a large source of ozone forming emissions, particular volatile organic compounds ("VOCs") and nitrogen oxides ("NO<sub>x</sub>"). It is critical that any Title V permit for the Altamont South Compressor Station effectively limit ozone forming emissions to assure compliance with applicable requirements and attainment and maintenance of the ozone NAAQS.

We are concerned that the draft permit does not assure compliance with applicable requirements under the Clean Air Act, including requirements under Title V and the Utah State Implementation Plan ("SIP") and relevant construction permits. We object to DAQ's proposal to issue the draft Title V permit. Our concerns are as follows:

**1. The draft Title V permit does not require prompt reporting of deviations in accordance with the Clean Air Act**

The draft Title V permit does not appear to require prompt reporting of permit deviations in accordance with the Clean Air Act. Of concern is that although Condition I.S.2.c requires reporting of deviations, it does not appear that such reporting is sufficiently prompt and satisfies Title V requirements.

Prompt reporting is defined "in relation to the degree and type of deviation likely to occur and the applicable requirements." 40 C.F.R. § 70.6(a)(3)(iii)(B). In explaining the meaning of "prompt," the House Report for the Clean Air Act Amendments of 1990 stated that "the

permittee would presumably be required to report that violation without delay.” H.F. Rep. No. 101-490, pt. 1, at 348 (1990). In commenting on other proposed state operating permit programs, the U.S. Environmental Protection Agency (“EPA”) has explained:

In general, the EPA believes that ‘prompt’ should be defined as requiring reporting within two to ten days for deviations that may result in emissions increases. Two to ten days is sufficient time in most cases to protect public health and safety as well as to provide a forewarning of potential problems.

Clean Air Act Proposed Interim Approval of Operating Permits Program: State of New York, 61 Fed. Reg. 39,617-39,602 (July 30,1996). The second circuit court of appeals held that “prompt” for purposes of prompt reporting of permit deviations must at least be less than every six months depending upon the source’s compliance history and public health risk. *NYPIRG v. Johnson*, 427 F.3d 172 (2<sup>nd</sup> Cir. 2005). Other permitting authorities, such as Colorado and even the EPA, require full reporting of deviations related to hazardous or toxic air emissions within 24-hours and deviations related to other air pollutants within 48 hours. *See e.g.* 40 C.F.R. § 71.6(a)(3)(iii)(B) (setting forth EPA’s requirements related to prompt reporting of permit deviations).

In this case, the draft Title V permit only requires reporting of deviations within 14 days, regardless of the nature of the violation. Fourteen days does not appear to be prompt, nor does it appear to reflect any consideration of degree and type of deviation likely to occur and the applicable requirements. DAQ must require prompt reporting of permit deviations within a timeframe similar to that established by EPA and other states.

## **2. Condition II.B.1.b, Condensate Production**

While this Condition limits condensate production at Altamont South to no more than 7,000,000 gallons per 12-month rolling period, it is not clear how Kinder Morgan will monitor condensate production to assure compliance.

Condition II.B.1.b.1 states that Kinder Morgan will utilize recordkeeping in order to monitor compliance. Recordkeeping requirements under Condition II.B.1.b.2 state that Kinder Morgan will determine production “using records of tank throughput, and hours of operation.” However, the draft Title V permit does not specify how Kinder Morgan will measure tank throughput in order to gather reliable data regarding production. It is also not clear how “hours of operation” will be monitored. The draft Title V permit states that “hours of operation shall be determined by supervisor monitoring and maintaining of an operations log,” but it is not clear what “supervisor monitoring” is, how it will yield reliable data regarding hours of operation for the tanks, and it is not clear how Kinder Morgan will maintain an “operations log” such that the company will accurately monitor and document actual hours of operation.

A Title V permit must set forth monitoring sufficient to yield reliable data from the relevant time period that are representative of the source’s compliance with the permit. *See* 40

C.F.R. § 70.6(a)(3)(i)(B). Any Title V permit for the Altamont South facility must set forth sufficiently specific procedures and methods for monitoring condensate production in order to assure compliance with the applicable throughput limit.

### 3. Condition II.B.3, Flare

This Condition establishes requirements related to the operation of the emergency flare, but it does not appear to incorporate and assure compliance with all applicable requirements and is not enforceable as a practical matter.

To begin with, the draft Title V permit does not appear to incorporate and assure compliance with best available control technology (“BACT”) requirements applicable to the flare. The Utah SIP has required and continues to require that approval orders assure compliance with BACT. *See* R307-401-8(a)(1). Under the SIP, “best available control technology” is defined as:

[A]n emissions limitation [] based on the maximum degree of reduction for each air pollutant which would be emitted from any proposed stationary source or modification which the director [] determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques [] for control of such pollutant.

R307-401-2.<sup>1</sup> As is clear, to assure compliance with “best available control technology,” a source must comply with an emissions limitation and associated requirements related to the application of methods, systems, and techniques for the control of such emissions.<sup>2</sup>

Here, it appears the flare is subject to applicable BACT requirements. Condition II.B.3.a of the draft Title V permit cites “R307-401-8” as authority for the operation of the flare. Past Title V permits issued to the Altamont South Compressor Station have also cited “R307-401-8(a)(1)” as a requirement applicable to the flare. *See e.g.* January 19, 2012 Title V Permit for Altamont South Compressor Station (Permit No. 1300041003), Condition II.B.3.a (stating that “R307-401-8(1)(a) (BACT)” is an applicable requirement). In spite of this, Condition II.B.3 does not actually assure compliance with any emissions limitations and associated requirements related to the application of methods, systems, and techniques for the control of such emissions.

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<sup>1</sup> Although the Utah SIP has undergone renumbering and reorganization over the years, the definition of “best available control technology” has remained unchanged.

<sup>2</sup> BACT requirements in the Utah SIP are applicable requirements under Title V of the Clean Air Act. Under Title V, permits must assure compliance with applicable requirements, “including the requirements of the applicable implementation plan.” 42 U.S.C. § 7661c(a). To this end, applicable requirements have been defined by the EPA to include “[a]ny standard or other requirement provided for in the applicable implementation plan[.]” 40 C.F.R. § 70.2.

Past permit applications submitted by Kinder Morgan indicate the flare is assumed to meet a number of operational requirements and emission limitations, which we presume represent BACT and are therefore applicable requirements. For instance, in a September 1, 2011 Letter of Amendment to a Notice of Intent to Modify submitted to DAQ, the company indicated the flare is presumed to burn 50 scf/hour of natural gas to operate the continuous flare pilot and to use an additional 28 scf/hour of natural gas as continuous purge gas. Further, in 2012 the company submitted a notice of intent indicating it assumes the flare will combust a maximum of 0.44 MMscf/year of gas, that the combusted gas will have a heating value of 1,116 Btu/scf, and that combustion of gas will release 0.068 lbs/MMBtu of NO<sub>x</sub>, 0.37 lbs/MMBtu of carbon monoxide, and 0.14 lbs/MMBtu of VOCs.

The draft Title V permit contains no limitations, standards, or requirements to assure the flare operates consistent with the assumptions that represent BACT. Condition II.B.3 does not include any actual emission limits or requirements governing the operation and maintenance of the flare. The draft Title V permit sets forth no limits on NO<sub>x</sub> or VOCs and no limits on throughput. While Condition II.B.3.b establishes an opacity limit of 20%, there is no indication that compliance with this limit automatically equates to compliance with every assumption regarding the operation of the flare and emissions of other pollutants, including NO<sub>x</sub> and VOCs.

It may be argued that the assumptions presented by Kinder Morgan in past applications represent maximum capacity, maximum heat input, maximum hours of operation, and maximum fuel consumption, and therefore there is no need for a Title V permit to set forth emission limitations and operational requirements. However, the emission factors relied upon to estimate potential emissions are not based on maximum assumptions.

Kinder Morgan's past applications indicate the presumed emission factors are based on Chapter 13.5 of EPA's AP-42 Compilation of Emission Factors from Stationary Sources. While Chapter 13.5 presents emission factors for NO<sub>x</sub>, carbon monoxide, and VOCs from flares, these emission factors are based on the presumption that flares are achieving a 96.5% combustion efficiency and a 98% pollutant destruction efficiency. The draft Title V permit does not require the flare to meet a 98% destruction efficiency or otherwise set forth operational requirements and limitations to assure that the flare meets a 98% destruction efficiency at all times. Indeed, the draft Title V permit does not even require Kinder Morgan to ensure the flare is operated with a pilot light present at all times, or that the pilot light is maintained and operated at a sufficient temperature, pressure, and volume to guarantee effective combustion consistent with Kinder Morgan's assumptions. Overall, the draft Title V permit does not ensure the flare operates to achieve any level of VOC control, meaning VOC emissions related to "depressurization" events are effectively uncontrolled, contrary to applicable requirements.

Compounding this problem is that the draft Title V permit does not set forth periodic monitoring to assure that the flare operates in compliance with assumed emission rates at all times. Title V permits must set forth sufficient periodic monitoring that assures compliance with applicable requirements. See 40 C.F.R. § 70.6(a)(3)(i)(B) and (c)(1).

Our concerns are underscored by the fact that the Title V permit effectively contains no enforceable limitations on when Kinder Morgan can utilize the Emergency Flare. Condition II.B.3.a states that the company must utilize the flare to combust gases, vapors, and fumes from “the depressurization of the compressors and other equipment during emergencies, upset conditions, planned maintenance, or repair activities[.]” This Condition is vague and undefined. As written, Kinder Morgan can essentially vent whenever it believes it needs to “depressurize” so long as it is during an “emergency,” “upset,” “maintenance,” or “repair.” The draft Title V permit does not define what constitutes “depressurization” or an “emergency,” “upset,” “maintenance,” or “repair,” and therefore effectively allows the company to flare whenever it wants. Further, the draft Title V permit contains no limits on the duration of flaring events, meaning the permit effectively allows the company to flare as long as it wants. Although Kinder Morgan has claimed that the flare will combust 28 scf/hour of continuous purge gas, it is not clear that this is an accurate estimate or that it comports with what the draft Title V permit actually allows.

The draft Title V permit must set forth emission limitations and standards, including operational requirements and limitations, that assure compliance with applicable requirements. *See* 40 C.F.R. § 70.6(a)(1). To this end, the draft Title V permit for Altamont South must set forth emission limitations and standards, including operational requirements and limitations, that assure compliance with applicable BACT requirements for the flare. Given this, the Title V permit must set forth limits and requirements that assure the flare is operated consistent with Kinder Morgan’s operational assumptions and operated to meet assumed emission rates. The Title V permit must also set forth operating and maintenance requirements to assure the flare continuously achieves the presumed destruction efficiency and combustion efficiency, and set forth sufficient periodic monitoring that assures compliance with all applicable emission limits and operational requirements and limitations.

#### **4. Condition II.B.9, Condenser**

This Condition establishes requirements related to the operation of the condenser unit, which is the emissions point for the tri-ethylene glycol dehydrator still vent, but it does not appear to incorporate and assure compliance with all applicable requirements. The Condition also does not appear to be enforceable as a practical matter.

To begin with, the draft Title V permit does not appear to incorporate and assure compliance with BACT requirements applicable to the still vent condenser. In particular, Condition II.B.9 does not assure compliance with any emissions limitations and associated requirements related to the application of methods, systems, and techniques for the control of such emissions.

Of particular concern is that the draft Title V permit does not incorporate assumed emission limits and operational requirements and limitations determined to be BACT under the Utah SIP. As previously determined, BACT for the tri-ethylene glycol dehydrator was considered

to be “the use of the flash emission capture and recovery and the still vent condenser[.]” El Paso Midstream Group, Altamont South Compressor Station, Approval Order DAQEAN010211006712 Notification of Intent to Modify (May 23, 2012) at Appendix G.<sup>3</sup> As part of Kinder Morgan’s previous BACT determination for Altamont South, the company concluded that if the condenser was operated effectively, it would reduce VOC emissions by 97.78% and reduce hazardous air pollutants (“HAPs”) by 99.57%. *See id.* at Appendix C. According to Kinder Morgan, the use of a condenser to control emissions from the tri-ethylene glycol unit would reduce total VOC emissions from more than 619 tons per year to less than 14 tons per year. *Id.*

The draft Title V permit contains no requirements or limitations to ensure the condenser reduces emissions from the tri-ethylene glycol dehydrator as assumed and consistent with the previous BACT determination. The draft Title V permit does not even require Kinder Morgan to route gases from the dehydrator and reboiler still vent through the condenser. The only condition imposed by the draft Title V permit for the condenser is a 20% opacity limit, which does not even appear to be derived from BACT requirements in the Utah SIP.

BACT is an applicable requirement in this case. DAQ can only issue an approval order if BACT has been met. *See* R307-401-8(a)(1). To this end, to secure approval orders, Kinder Morgan has determined that BACT for the tri-ethylene glycol dehydrator unit is the use of a condenser to control VOC and HAP emissions. To assure compliance with this applicable requirement, the Title V permit must include emission limitations and standards, including operational requirements and limitations, that assure Kinder Morgan operates in compliance. The Title V permit must at least state clearly that Kinder Morgan must, at all times, route gases from the dehydrator and reboiler still vent through the condenser, must limit throughput consistent with assumptions in Kinder Morgan’s past notices of intent and BACT determinations, but establish actual limits on VOCs and HAPs, must set forth operation and maintenance requirements for the condenser that assure it meets a 97.78% control efficiency at all times, and set forth periodic monitoring to verify compliance with emission limits and the required control efficiency.

#### **5. Condition II.B.10, Combustor and Vapor Recovery Tower-Vapor Recovery Unit**

This Condition establishes requirements related to the operation of the combustor and the vapor recovery tower-vapor recovery unit, which controls emissions from the pit tank and four condensate storage tanks, but it does not appear to incorporate and assure compliance with all applicable requirements. The Condition also does not appear to be enforceable as a practical matter.

To begin with, the draft Title V permit does not appear to incorporate and assure compliance with BACT requirements applicable to the combustor and vapor recovery tower-vapor recovery unit. In particular, Condition II.B.10 does not assure compliance with any

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<sup>3</sup> El Paso Midstream was acquired by Kinder Morgan in 2012.

emissions limitations and associated requirements related to the application of methods, systems, and techniques for the control of such emissions.

Of particular concern is that the draft Title V permit does not incorporate assumed emission limits and operational requirements and limitations determined to be BACT under the Utah SIP. As previously determined, BACT for the tanks was considered to be “the installation of the VRT [vapor recovery tower] for condensate stabilization[.]” El Paso Midstream Group, Altamont South Compressor Station, Approval Order DAQEAN010211006712 Notification of Intent to Modify (May 23, 2012) at Appendix G. Presumably, Kinder Morgan subsequently determined that operation of a combustor to control outlet emissions from the tanks also represented BACT.

The draft Title V permit contains no requirements or limitations to ensure the combustor and vapor recovery tower-vapor recovery unit reduces emissions from the tanks as assumed and consistent with previous BACT determinations. The only conditions imposed are that the combustor be equipped with an “operational” auto-igniter and comply with a 20% opacity limit, which does not even appear to be derived from BACT requirements in the Utah SIP. The draft Title V permit does not even require the auto-igniter to operate, just that it be “operational.” The draft Title V permit also does not even require the vapor recovery tower-vapor recovery unit and combustor actually operate to control emissions at the tanks at all times.

BACT is an applicable requirement. DAQ can only issue an approval order if BACT has been met. *See* R307-401-8(a)(1). To this end, to obtain approval orders from DAQ, Kinder Morgan has determined that BACT for the tanks is the use of a vapor recovery tower-vapor recovery unit and a combustor. To assure compliance with this applicable requirement, the Title V permit must include emission limitations and standards, including operational requirements and limitations, that assure Kinder Morgan operates in compliance. The Title V permit must limit throughput consistent with assumptions in Kinder Morgan’s past notices of intent and BACT determinations, establish actual limits on VOCs and HAPs, must set forth operation and maintenance requirements that assure the vapor recovery tower-vapor recovery unit and combustor meet assumed control efficiencies at all times, and set forth periodic monitoring to verify compliance with emission limits and the assumed control efficiency.

#### **6. Condition II.B.11, storage tanks**

This Condition requires that all emissions from the pit tank and condensate storage tanks be routed to the combustor. Unfortunately, this Condition does not set forth sufficient periodic monitoring that assures compliance with this applicable requirement. The Condition also does not appear to be enforceable as a practical matter.

The draft Title V permit states only that “Records required for this permit condition will serve as monitoring.” To this end, the permit states that “Records shall be maintained for periods when emissions from the pit tank (T-1) and condensate storage tanks (T-2, T-3, T-5, and

T-6) are not routed to the Combustor.” However, the draft Title V permit does not explain what methods and/or techniques will be utilized to maintain records for periods when emissions are not routed to the combustor. We are particularly concerned that the permit does not require the use of a flow meter or other equipment to sufficiently monitor whether emissions are being routed to the combustor, as required by Condition II.B.11.a. The draft Title V permit must explain how Kinder Morgan will accurately track whether emissions from the tanks are being routed to the combustor in order to assure compliance with applicable requirements.

**7. The Title V permit must include BACT requirements applicable to truck loading of condensate**

Although the draft Title V permit identifies condensate loading as an emission unit at Altamont South (emission unit “LO”), the permit contains no emission limitations and standards, including operational requirements and limitations, that assure truck loading meets applicable BACT requirements.

Of concern is that Kinder Morgan has determined that BACT for the truck loading was “submerged loading[.]” El Paso Midstream Group, Altamont South Compressor Station, Approval Order DAQEAN010211006712 Notification of Intent to Modify (May 23, 2012) at Appendix G. In spite of this, the draft Title V permit does not require that submerged loading be utilized to ensure compliance with BACT and appropriately control emissions from condensate loading.

The draft Title permit asserts that there are “No unit-specific applicable requirements” for condensate loading, but this does not appear to be the case. In prior applications, Kinder Morgan has estimated VOC emissions from truck loading utilizing submerged loading to be 6.32 tons per year.

The Title V permit must include requirements that Kinder Morgan utilize submerged loading for condensate loading, as well as include the assumed emission limit of 6.32 tons per year. The Title V permit must also set forth operation and maintenance requirements to ensure that submerged loading is effectively utilized to meet BACT assumptions and to ensure that VOC emissions are limited in accordance with applicable requirements in the Utah SIP.