



July 14, 2021

Via <https://www.regulations.gov>

Debra Thomas
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, Colorado 80202
Docket ID No. EPA-HQ-OAR-2017-0548

RE: Colorado Oil & Gas Association's Comments on EPA's Decision to Redesignate the Northern Portion of Weld County as Nonattainment

Dear Acting Regional Administrator Thomas,

The Colorado Oil & Gas Association ("COGA") respectfully submits this comment regarding the U.S. Environmental Protection Agency's ("EPA") Weld County Remand 120-Day Letter ("Remand Letter"), dated May 25, 2021, in which EPA notified Colorado of its proposal to designate the entirety of Weld County as nonattainment for the 2015 Ozone National Ambient Air Quality Standard ("NAAQS"). For the reasons explained below, EPA's proposal to include the northern portion of Weld County within the nonattainment boundary without evaluating current and more accurate data is arbitrary and capricious. COGA asks EPA to withdraw its proposal to designate the entirety of Weld County as an ozone nonattainment area ("NAA") and to reevaluate the appropriate NAA boundaries using current data.

For over 36 years, COGA has fostered and promoted the beneficial, efficient, responsible, and environmentally sound development, production, and use of Colorado's oil and natural gas resources, a large proportion of which are located in the Denver-Julesberg Basin (DJ Basin), including the northern portion of Weld County. With over 250 members, COGA's mission is to be the unified political and regulatory voice for the oil and natural gas industry in Colorado, and to support our members through advocacy partnerships, education and stakeholder engagement. An expansion of the current Denver/Metro ozone nonattainment area ("D/M NAA") boundary will significantly impact COGA members. COGA appreciate EPA's consideration of these comments on the designation. COGA also supports the separate comments submitted by the Weld County Board of County Commissioners ("Weld County").

I. EPA Should Consider All Relevant and Current Air Quality Data in its Redesignation Determination

EPA's proposed expansion of the D/M NAA boundary to include the northern portion of Weld County is in response to the D.C. Circuit's remand in *Clean Wisconsin v. EPA*, 964 F.3d 1145 (D.C. Cir. 2020). 86 Fed. Reg. 31460, 31462 (June 14, 2021). In that case, the appellate court (the "Court") remanded the EPA's designation of the D/M NAA for further explanation. The Court, however, did not vacate EPA's prior designation, and explained that "there is at least a realistic possibility that EPA will be able to substantiate the relevant designations [of Weld County] on remand." *Clean Wisconsin*, at 1177. Despite admitting that it does not have a clear understanding of the emissions in the northern portion of Weld County, EPA has

remarkably decided to limit its redesignation review to 2014-2016 air quality data. See EPA 2021 Technical Support Document, at 12 https://www.epa.gov/sites/production/files/2021-05/documents/final_clean_co_tsd_-_weld_county_remand.pdf (stating that due to the “problematic” approach used in Colorado’s 2016 TSD, EPA “does not have an accurate understanding of actual emissions from the northern portion of Weld County”). EPA explains that it is only considering “information that was part of the existing record for the original final area designations promulgated on April 30, 2018.” The proposed designation is; therefore, arbitrary because it intentionally relies on uncertain emissions data.

Data from after 2016, however, is available that isolates northern Weld and Larimer County emissions from other nonattainment area emissions. From this data, it can be estimated that the northern portion of Weld County’s anthropogenic emissions of ozone precursors comprise no more than 4% of the NAA NOx emission inventory and 2.6% of the NAA VOC emissions inventory. These low percentages of ozone precursor emissions likely overestimate the true level of NOx and VOC emissions from sources in the northern portion of Weld County, because a portion of these emissions are emitted in Larimer County. EPA is inappropriately limiting its reevaluation to the original, nearly 4-old rulemaking record.

EPA attempts to justify its decision by asserting that it “would prevent inconsistent treatment between the remanded counties and every other area of the country.” 86 Fed. Reg. 31460, 31462 (June 14, 2021). However, this approach was not required by the Court and is not consistent with recent designation processes where EPA accepted and considered additional and more current air quality data to make the most informed and reasoned redesignation decision. In other designation decisions for the 2015 ozone NAAQS, EPA has allowed the submission and consideration of additional and more current air quality monitoring data. EPA appears to assume that all designations of attainment and nonattainment areas for the 2015 ozone NAAQS rely on a common data set, but such an assumption is not accurate.

In late 2017, as part of its designation process under the 2015 ozone NAAQS, the EPA allowed Georgia to provide more current 2015-2017 air quality data, or any other additional information it wished the EPA to consider. Georgia provided the more current data and revised its initial designation recommendation to exclude Rockdale County from its recommended nonattainment area. See Ga. Dep’t of Nat. Res., *Letter Re: Georgia’s Revised Designation Recommendations for the 2015 Ozone NAAQS*, EPA-HQ-OAR-2017-0548-0289 (Feb. 2, 2018). The EPA ultimately agreed with Georgia’s assessment of the most current data and removed Rockdale County from its nonattainment designation. See EPA, *Georgia: Atlanta, Georgia Nonattainment Area, Final Area Designations for the 2015 Ozone National Ambient Air Quality Standards Technical Support Document* (“After considering the February 2, 2018 updated recommendation, and March 30, 2018 supplemental technical analysis, and based on the EPA’s technical analysis as described in this TSD, the EPA is . . . designating the remainder of the Atlanta combined statistical area (CSA) (including Rockdale County) as attainment/unclassifiable.”). Had Georgia not been allowed to provide the more current and accurate air quality data, one county would have been unnecessarily subject to a nonattainment designation and the drastic economic and regulatory consequences that come with such a designation.

Similarly, EPA allowed Michigan to provide more current and available air quality data and analyses such as updated HYSPLIT and photochemical modeling and ozone gradient studies to revise its initial nonattainment recommendations for Allegan and Muskegon counties from full-county to partial-county nonattainment areas. See Mich. Dep’t of Env’t. Quality *Letter Re: Area Designations for the 2015 Ozone Standard*, EPA-HQ-OAR-2017-0548-0289 (Feb. 22, 2018). EPA considered this additional information and ultimately changed from designating the entirety of Allegan and Muskegon counties to partial nonattainment areas within each county. See EPA, Michigan Detroit, Muskegon County, Allegan

County, and Berrien County Nonattainment Areas Final Area Designations for the 2015 Ozone National Ambient Air Quality Standards Technical Support Document (TSD). EPA has also afforded other states the opportunity to provide more current air quality monitoring data, and multiple states have understandably taken advantage of EPA's willingness to consider the best available data in making such a consequential attainment designation. Consistency mandates that all states be afforded the same opportunity to provide the most current and accurate air quality data and information in making these consequential redesignations.

By excluding new data and information, EPA is ignoring several years of available and extensive data collection and analysis. As demonstrated further in the Weld County public comments, it can be estimated that the northern portion of Weld County anthropogenic emissions are no more than 4% of the NAA NO_x emission inventory and 2.6% of the NAA VOC emissions inventory. Without a complete understanding of the most current data, EPA should not include northern portion of Weld County within the nonattainment area. EPA's explains that its redesignation decision is based on "only data available at the time of the original designation." As explained above, in reaching this decision, EPA ignored the last several years of available data that may accurately inform EPA's significant decision. Regardless of what that data shows, EPA's failure to contemplate current data and its potential implications is incomplete and, arguably, arbitrary and capricious.

In sum, the EPA can, and should, respond to the Court's remand and consider the best and most complete available data in making its redesignation determination. Review of the current data will allow EPA to consider the contribution of sources in the northern portion of Weld County to NAAQS violations within the D/M NAA and make a redesignation decision on the most current and accurate data and information available.

II. EPA Did Not Consider Oil and Gas Industry Emission Reduction Efforts in The Northern Portion of Weld County

EPA's limited approach also does not account for post-2016 oil and gas emission reduction strategies that have contributed to decreasing emissions from the northern portion of Weld County sources, including oil and gas. Many of Colorado's recently adopted Air Quality Control Commission ("AQCC") regulations were promulgated as "state-wide" requirements. These requirements require compliance for all applicable oil and gas sources within the state, including sources in northern portion of Weld County. These post-2016 regulatory requirements include, for example:

- Storage tank emission control requirements at smaller facilities;
- Emission controls and inspection requirements at truck loadout operations;
- More frequent leak detection and repair ("LDAR") monitoring;
- Emission reductions for reciprocating internal combustions engines greater than 1,000 horsepower; and
- Control of preproduction flowback storage vessels;
- Non-emitting pneumatic controllers at all new facilities and retrofit of a portion of existing facilities.

Additionally, the Colorado Oil and Gas Commission (“COGCC”) promulgated several “Mission Change” regulations between April 2019 and November 2020. This extensive suite of regulations included requirements to regulate, and arguably, reduce emissions from natural gas flaring and production pits, among others.

Colorado’s recent regulatory actions are relevant because they impact emissions, which is one of the five factors EPA identified for consideration when designating ozone nonattainment areas. Janet McCabe, “Area Designations for the 2015 Ozone National Ambient Air Quality Standards” (Feb. 25, 2016). The promulgation of multiple regulations after Colorado submitted its 2016 TSD indicates that current emissions from northern Weld County may be lower than the estimates provided above. The adoption of these oil and gas regulations necessitates a reevaluation of EPA’s conclusion that large percentages of controllable NOx and VOC emissions in Weld County come from oil and gas, a conclusion upon which EPA relies for its proposal to designate northern Weld County as a NAA. EPA 2021 TSD at 31.

EPA’s rushed and incomplete evaluation of the emissions in the northern portion of Weld County does not consider Colorado’s significant and ongoing emission reduction efforts that have occurred since the preparation of the original administrative record. These regulatory efforts, and COGA member’s compliance with the same, continue to lower oil and gas emissions across the state and in the northern portion of Weld County.

III. Conclusion

If the boundary of the D/M NAA is expanded, many companies will become subject for the first time to burdensome and costly AQCC regulatory requirements that currently apply only to the nonattainment area. These requirements include, for example, lower permit and emission applicability thresholds; more stringent emission control requirements; more stringent monitoring and reporting requirements; and no-bleed pneumatic controller requirements. To ensure compliance with these requirements, companies will likely be forced to install and/or retrofit equipment at their facilities and hire more employees. Each of these additional regulatory requirements present significant and costly compliance requirements for COGA members in the northern portion of Weld County. Regulatory actions should be based on the most accurate available data. Designating a nonattainment area based on outdated and incomplete information would be arbitrary and capricious. COGA asks that EPA consider the most accurate and current air quality data before making a decision and withdraw its proposed designation and reevaluate the appropriate NAA boundaries using current data.

If you or your staff should have any questions regarding these comments, please do not hesitate to contact me at COGA’s offices, at 303-861-0362, or by email to Christy.Woodward@COGA.org.

Sincerely,



Christy Woodward
Senior Director of Regulatory Affairs
Colorado Oil & Gas Association