



April 23, 2024

The Honorable Joseph Biden
President of the United States of America
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

Dear President Biden,

In the spirit of cooperative federalism, which has been the foundation of the successful implementation of the Federal Clean Air Act¹ (CAA) and the resulting decades of improved air quality, we would like to ask for increased flexibility and raise awareness of the significant challenges facing our states as we continue working to meet current CAA requirements and improve air quality in our states. We would like to raise a collective concern about the attainment of the 8-hour ozone National Ambient Air Quality Standard (NAAQS) in the face of substantial regionally specific challenges. We are also alarmed about the possible sanctioning of states that struggle to attain the standard and the counterproductive effect of transportation sanctions while better solutions exist within the targeted transportation communities.

Western states face significant regionally-specific challenges in meeting the 8-hour ozone NAAQS given elevated natural background ozone levels,^{2,3} significant biogenic contributions,⁴ the influence of internationally transported pollution,⁵ some of the fastest growing populations in the nation,⁶ and the increasing influence of wildfires.⁷ Compounding the difficulty presented by these challenges, a significant amount of ozone-forming pollution comes from mobile sources that fall under federal regulatory jurisdiction leaving states with limited authority to reduce emissions from this sector. Additionally, as many Western states have previously implemented an array of pollution reduction policies to address air quality, there are exceedingly few remaining policies left for states to adopt. This challenge is exacerbated by the current overly strict interpretation of the CAA by the Environmental Protection Agency (EPA), which limits a state's ability to incorporate control measures into a State Implementation Plan. For example, EPA's lack of clear direction on implementing new requirements for contingency measures

¹ 42 U.S. Code § 7401

² Jaffe et al., 2018. Scientific Assessment of background ozone over the U.S.: Implications for air quality management. *Elem Sci Anth*, DOI: <https://doi.org/10.1525/elementa.309>

³ Moore and Uhl, 2018. Western Ozone NAAQS Implementation Issues: Addressing Background and Transport. *EM - Air & Waste Management Association*, September 2018.

⁴ Description and preliminary evaluation of BELD 6 and BEIS 4. Office of Research and Development. Jesse O. Bash and Jeff Vukovich.

⁵ Langford, A.O. et al. (2017). Entrainment of stratospheric air and Asian pollution by the convective boundary layer in the southwestern U.S.; *J. Geophys. Res. Atmos.*, 122, 1312-1337, doi:10.1002/2016JD025987

⁶ U.S. Census Bureau (2022).

⁷ Buchholz, R.R., Park, M., Worden, H.M. et al. New seasonal pattern of pollution emerges from changing North American wildfires. *Nature Communications* 13, 2043 (2022). <https://doi.org/10.1038/s41467-022-29623-8>

requires states to undertake unnecessary paperwork exercises and delay the implementation of potentially viable control measures. Despite ongoing work by Western states to improve air quality, including through accelerating the adoption of low and non-emitting vehicle technology⁸, improvements in the use of small off-road engines⁹, and the implementation of innovative programs to control emissions from stationary sources¹⁰, these regional challenges leave Western states with a narrow set of tools and a difficult path to meeting the requirements of the CAA and attaining the NAAQS. To illustrate the scope of this challenge, in some areas of the Western U.S., local anthropogenic emissions account for as little as 20% of the total ozone that contributes to nonattainment, of which more than half is attributable to federally regulated mobile sources. The remaining 80% of ozone contributing to nonattainment is attributable to natural, interstate, or international sources. All of these challenges lead to states having little to no reasonable pathway to attaining current standards, let alone potentially more stringent future standards.

Western states face additional challenges in achieving attainment, given increased wildfire activity in the region in recent years. While states have adopted forest management and fire mitigation programs to control wildfire activity within their jurisdictions, these programs cannot control, and do not lessen, the impact of wildfire smoke transported from other states and countries. Under the current EPA interpretation of the Exceptional Events rule, however, states have severely limited options to exclude wildfire impacts from their attainment determinations. This leaves states in a position where they are forced to account for the uncontrollable impact of wildfire smoke when determining attainment without a viable pathway for obtaining regulatory relief from increasingly stringent requirements triggered by the CAA.

Given these challenges, multiple western U.S. states are now finding it difficult or even impossible to implement plans that meet the requirements of the CAA and contain reasonable pathways to attainment. As a result, states are facing the threat of sanctions to federal highway funds under Section 179(b) of the CAA.¹¹ Examples include the interpretation of contingency measure requirements,¹² reporting requirements,¹³ unreasonable deadlines,¹⁴ and the failure to implement emission reduction policies when reasonable policies are not available.¹⁵ As the transportation sector is key to reducing emissions, and given the limitations on states' authority to regulate mobile sources and interstate commerce, proper transportation planning is one of the few effective tools at the disposal of the state to reduce emissions from this sector.

Sanctioning federal highway funds and effectively shutting down regionally significant transportation projects would hamstring states' ability to implement effective planning, which is counterproductive to the shared goal of improving air quality. This is especially true in areas experiencing rapid population

⁸ For example see 5 Code of Colorado Regulations (CCR) 1001-24

⁹ For example see 5 Code of Colorado Regulations (CCR) 1001-33

¹⁰ For example see 5 CCR 1001-5, 1001-9, 1001-30, 1001-31

¹¹ 40 CFR § 52.31

¹² 88 FR 54975

¹³ 88 FR 68532

¹⁴ 88 FR 71757

¹⁵ Utah State Implementation Plan Section IX Part D.11

growth, like the West, where active and thoughtful transportation planning is critical to mitigate emissions from mobile sources. Further, given the current funding available through the Inflation Reduction Act and the Infrastructure Investment and Jobs Act, and the stated goals of these programs, denying states access to federal highway funds and impacting regionally significant projects would only starve viable projects that could substantially reduce transportation emissions. Finally, the timing of potential sanctions is particularly counterproductive given the recent action by the EPA to reduce pollutants from light and medium-duty vehicles,¹⁶ as well as heavy-duty vehicles,¹⁷ beginning in model years 2027 and 2028, respectively, and recent actions taken by several Western states to accelerate the adoption of low and non-emitting vehicle technologies¹⁸. The anticipated emission reductions from these rules should be given adequate time to be realized.

In light of these substantial challenges and the counterproductive consequences of imposing sanctions against states that struggle to find a reasonable pathway to attainment, we would like to offer the following potential solutions and opportunities to engage with Western states:

- Initiate collaborative efforts between the EPA and Western states to identify how the Exceptional Events framework can more appropriately be implemented given increased wildfire activity, and provide more consideration for the emissions benefits of wildfire mitigation strategies in reducing air pollution in the West and nationally;
- Implement common-sense reforms to the Renewable Fuels Standard¹⁹ for ozone nonattainment areas to address the increased ozone formation resulting from the Reid Vapor Pressure waiver for ethanol blended gasoline or boosting or subsidizing EV sales;
- Work with states on approving novel, “outside of the box” solutions for reducing emissions that EPA has been unwilling to consider as SIP-eligible policies in the past, especially in difficult-to-regulate sectors like mobile sources;
- Work with states to establish streamlined processes, provide technical assistance, and conduct regular reviews to ensure timely approval of projects with air quality benefits are neither denied nor delayed;
- Revisit the definition of “regionally significant” as it applies to transit projects to avoid imposing sanctions on activities that could serve as a solution to local air quality challenges;
- Work with states to identify a pathway to approve strong technical CAA 179B submissions for non-international border nonattainment areas that demonstrate that an area would have attained the ozone NAAQS but for emissions emanating from outside of the U.S.²⁰ To date, EPA has limited the ability for States to seek relief under these provisions to border states.²¹ This limitation is not contemplated by the CAA, and expanding the applicability to non-border states will provide the intended relief from nonattainment provisions to all states impacted by contributions from international emissions;

¹⁶ 88 FR 29184

¹⁷ 88 FR 25926

¹⁸ 5 CCR 1001-24

¹⁹ Public Law 109-58 & Public Law 110-140

²⁰ 42 U.S.C. § 7509a(a)(2)

²¹ Guidance on the Preparation of Clean Air Act Section 179B Demonstrations for NAAs Affected by International Transport of Emissions (Dec. 2020) (179B Demonstrations Guidance).

- As allowed by CAA 179(b)(1)(B), provide states and the transportation planning community facing federal highway sanctions a carveout for transportation projects that can demonstrate an emission reduction to avoid starving a viable emission reduction strategy of necessary funding when it is needed the most.

We emphasize our continued commitment to improving air quality through cooperative federalism and state-delegated programs as envisioned by Congress in the CAA. The strength of a delegated program is that it allows each individual state to implement a program uniquely tailored to that state's challenges. Yet, implicit in the delegation is that a reasonable and viable pathway to compliance exists. We look forward to working together to identify and implement solutions to give states the needed tools for success while avoiding unnecessary and counterproductive sanctions that would upend the transportation needs of, and delay improvements to air quality in, some of the fastest-growing areas of the nation.

Sincerely,



Governor Katie Hobbs
State of Arizona



Governor Spencer Cox
State of Utah



Governor Jared Polis
State of Colorado



Governor Mark Gordon
State of Wyoming