

**Comments of John R. Jacus and Andrea G. Huggins on behalf of the  
Colorado Chamber of Commerce  
on U.S. EPA's Proposed Rule: Finding of Failure to Attain and  
Reclassification of Denver Area for the 2008 Ozone National Ambient Air  
Quality Standard**

**September 6, 2019 – Denver, Colorado**

Dear Public Meeting Conveners with EPA:

Thank you for the opportunity to provide comment today. My name is John Jacus and I am an environmental lawyer with the firm of Davis Graham & Stubbs here in Denver. I am here today on behalf of the Colorado Chamber of Commerce, and its Energy & Environment Policy Council, which I have chaired for the last eight years. And I am Andrea Huggins, the Chair of the Energy & Environment Council's Air Quality Committee. The Chamber is a private, non-profit trade association whose members directly employ over 200,000 Coloradans in the private-sector workforce and include 40 Local Chambers of Commerce, which in turn represent over 20,000 Colorado member companies with approximately 1,000,000 employees. Thus, the Colorado Chamber of Commerce is truly the voice of industry in Colorado.

The Chamber's Energy & Environment Policy Council maintains energy and environmental committees to review legislative and regulatory proposals and other developments of potential concern to the Chamber's members. The Chamber has for years actively engaged in public comment, legislative testimony, agency

rulemaking, and occasionally even litigation regarding energy and environmental issues of importance to its members. EPA's proposed rule to reclassify the Denver Area as Serious Nonattainment for the 2008 ozone standard is one such very significant proposal of great concern to the Chamber and its members.

Our comments on behalf of the Chamber fall into two categories:

1. Opposing the EPA-proposed SIP submission deadlines as inadequate, prejudicial and potentially counterproductive in promoting short-term improvements in air quality; and
2. Asking EPA to be mindful of opportunities to help Colorado regulators and air quality planners to ensure a workable Emission Reduction Credit program and registry is available to meet heightened major source offset requirements for new and modified sources with the bump up of the Denver Area to serious nonattainment for the 2008 ozone standard.

First, with respect to EPA's proposed SIP submission deadlines for Colorado, we urge EPA to consider extending those deadlines for a number of good and valid reasons that were raised by the Colorado Department of Public Health and Environment, CDPHE, and the Regional Air Quality Council, or RAQC, in their comment letter submitted to EPA last December in Docket ID No. EPA-HQ-OAR-2018-0226. That comment was with respect to EPA's proposed one-year

extension of the attainment date for the Denver Area, which extension is no longer available due to Colorado's withdrawal of its request for such extension. That withdrawal, while likely sealing Colorado's fate with respect to reclassification, does not change the rationale or basis for establishing more workable SIP submission deadlines than those proposed by EPA. The Chamber agrees with and incorporates by this reference in these comments the rationale for different deadlines articulated by CDPHE and the RAQC in their December 2018 comment letter, a copy of which is appended to a written version of these public comments today, for your record of the meeting. [More specifically:

1. EPA has proposed alignment of Denver Area SIP deadlines associated with Serious nonattainment redesignation with national deadlines for other Moderate nonattainment areas recently redesignated as Serious in national rulemaking;
  - a. Serious SIP submission deadline and Reasonably Available Control Technology (RACT) tied to attainment implementation deadline is August 3, 2020, which is less than 11 months away; and
  - b. In the proposed rule for Denver Area, EPA is seeking comment on whether or not the Denver Area should have the same deadline for submitting SIP revisions for RACT measures not tied to attainment as other areas recently reclassified as Serious. This deadline is March 23, 2021.
  - c. For RACT not tied to attainment, the proposed implementation deadline is July 20, 2021.

2. EPA's proposed aligning of Colorado's deadline with the national deadlines provides too little time.
3. EPA-proposed deadlines substantially interfere with ongoing control measure development and implementation efforts.
4. EPA has discretion in setting deadlines for submittal of Serious SIP elements.
  - a. It should align the Serious SIP submittals for the 2008 ozone standard and the Moderate SIP submittal for the 2015 ozone standard; and
  - b. It should give Colorado more time, at least 12 months from the effective date of reclassification, if not more, for the Serious SIP submittal.
  - c. It should give Colorado the full 18 months from the effective date of the reclassification of the Denver Metro area for submitting RACT measures not tied to attainment, and not align Denver Metro's submittal date with other bumped up Moderate areas.

Regarding our second category of comment, the Chamber would like to generally urge EPA to support CDPHE in its efforts to administer a workable program for creating, registering and using emission reduction

credits for required offsets, so as to allow new and modified sources to continue to be constructed in the Denver Area. Without a workable program, we are concerned that air quality regulation in the Denver Area will have serious negative impacts on the regional economy and the overall business climate here in Colorado. The Chamber's members remain concerned that the existing ERC program is being interpreted quite rigidly by CDPHE, and this potentially limits the utility of the program for the proponents of new and modified source construction. Any assistance or re-visitation of ERC program requirements by EPA and CDPHE that could expand opportunities for creating ERCs would be most welcome, and a small sliver of sunlight in an otherwise gloomy circumstance, that of reclassification to Serious nonattainment for the 2008 ozone standard.

The Chamber believes EPA's proposed determination and related deadlines unnecessarily threaten economic harm to the Denver Area, and we urge EPA to modify its proposed rule accordingly, extending SIP submission deadlines as previously requested by CDPHE and the RAQC. Once again, we thank you for the opportunity to provide these comments of the Colorado Chamber of Commerce.