



**Andrew Revelle**

Associate  
801.799.5905  
Salt Lake City  
APRevelle@hollandhart.com

# EPA Reclassifies the Northern Wasatch Front and Uinta Basin Ozone Nonattainment Areas

## Insight — December 24, 2024

EPA recently redesignated the Northern Wasatch Front and the Uinta Basin ozone nonattainment areas based on data demonstrating that the areas failed to meet the 2015 ozone National Ambient Air Quality Standard (NAAQS) by their applicable deadlines. These actions require Utah to develop new State Implementation Plans (SIPs) to address ozone pollution in these areas and require stricter permitting requirements for new sources and modifications.

### The Northern Wasatch Front

On December 9, 2024, EPA determined that the Northern Wasatch Front ozone nonattainment area failed to attain the 2015 ozone NAAQS of 70 parts per billion (ppb) by the applicable attainment date and reclassified the area from “Moderate” to “Serious” nonattainment, effective January 8, 2025.<sup>1</sup> Additionally, the Northern Wasatch Front failed to meet the criteria under Clean Air Act (CAA) Section for a 1-year extension of the attainment date.

As a result, Utah must submit a Serious SIP, demonstrating how this area will attain the NAAQS as expeditiously as practicable.<sup>2</sup> The SIP must also include the following:

- require reasonably available control technology (RACT) for all sources that emit at least 50 tons per year (tpy) of VOC or NOx;
- a reasonable further progress (RFP) demonstration that the revised plan will reduce VOC emissions by at least 3% each year;<sup>3</sup>
- an enhanced program to reduce hydrocarbon and NOx emissions from in-use motor vehicles in the nonattainment area;<sup>4</sup>
- any necessary measures to make the use of clean alternative fuels in clean-fuel vehicles economic for vehicle owners in the area;<sup>5</sup> and
- attainment of the ozone standard by August 3, 2027.

EPA explained that it will establish a deadline for submitting the Serious SIP in a separate action.

Additionally, all “major sources” (those emitting 50 tpy or more of ozone, VOC, or NOx)<sup>6</sup> and “major modifications”<sup>7</sup> commencing construction on or after January 8, 2025—when the Northern Wasatch Front is officially reclassified to Serious—will be required to purchase emissions offsets at a ratio of 1.2:1 for their emissions of ozone, VOC, and NOx.

In reclassifying the Northern Wasatch Front, EPA ignored Utah's additional demonstrations under CAA Section 179B that the area would have met the ozone NAAQS but for the influence of emissions from international sources. Utah submitted a 179B demonstration in 2021 which the State then recently revised this year. However, EPA did not acknowledge or reference either of the demonstrations.

Notably, EPA issued the reclassification of the Northern Wasatch Front as a final rule without public notice and comment. EPA claimed that it has authority to do so under the Administrative Procedure Act's "good cause" exemption because the action was based solely on the area's emissions data.<sup>8</sup>

The deadline to petition for judicial review of this final rule is February 7, 2025.

### **The Uinta Basin**

On December 16, 2024, EPA denied a request by the State of Utah and the Ute Indian Tribe for a second extension of the deadline for the Uinta Basin to meet the 2015 ozone NAAQS of 70 parts per billion.<sup>9</sup> EPA had previously granted a 1-year extension to the deadline in 2022.<sup>10</sup>

EPA determined that the Uinta Basin met the requirements to be eligible for a second extension but nonetheless used its discretion to deny the request. This final action is a reversal of EPA's initial proposal to grant a second extension.<sup>11</sup> EPA based its decision on public comments urging the need for State action to reduce ozone concentrations, given the high wintertime concentrations in recent years. While emissions monitoring showed an overall trend towards attainment of the standard, the Uinta Basin experienced high ozone levels in 2023. EPA emphasized the risk that such high levels of ozone will persist due to wintertime inversions caused by meteorological conditions and the geography of the Basin which trap emissions in the ambient air.

Because the Uinta Basin failed to meet the ozone NAAQS by the extended attainment date, EPA also reclassified the area to "Moderate" nonattainment, effective January 15, 2024. This action by EPA has significant consequences for current and future sources of air pollutants in the Uinta Basin.

As a result of the reclassification to "Moderate" nonattainment, the State of Utah must submit a Moderate ozone SIP that demonstrates how the State will attain the ozone standard as expeditiously as practicable. Similar to the Serious ozone SIP requirements, the Moderate SIP must demonstrate the following:

- RACT for all sources that emit at least 100 tons per year of VOC or NOx);
- a 15% reduction in VOC during the 6-year period from 2018 through 2023; and
- attainment of the 2015 ozone standard by August 3, 2024.<sup>12</sup>

EPA also explained that it would establish a deadline for submittal of the Moderate Ozone SIP in a subsequent rulemaking.

For tribal lands within the Uinta Basin, EPA indicated that it would also promulgate a Federal Implementation Plan in a separate rulemaking. However, the Ute Tribe could instead develop a Tribal Implementation Plan (TIP) which would apply to those native lands if approved by EPA.

Such SIPs, FIPs, and/or TIPs could impose expensive emission control measures on sources of ozone, volatile organic compounds (VOC), and NOx in the Uinta Basin.

For all “major sources” (those emitting 100 tpy or more of ozone, VOC, or NOx)<sup>13</sup> and “major modifications” commencing construction on or after January 15, 2025—when the Uinta Basin is officially reclassified to Moderate nonattainment for ozone—will be required to purchase emissions offsets at a ratio of 1.15:1 for their emissions of ozone, VOC, and NOx.

The deadline to petition for judicial review of this final rule is February 14, 2025.

Crucially, the denial of the extension request and the reclassification also makes it very likely that the Uinta Basin will be subsequently reclassified to Serious nonattainment. The deadline to attain the ozone standard for Moderate nonattainment areas was August 3, 2024.<sup>14</sup> As Utah's air quality data indicates that Utah did not meet the standard by this deadline, EPA is required to determine, by February 3, 2025, that the Uinta Basin failed to meet this standard and to reclassify the Basin to “Serious” nonattainment for ozone.<sup>15</sup> Upon reclassification to Serious nonattainment, the stricter requirements outlined above for the Northern Wasatch Front will apply in the Uinta Basin as well.<sup>16</sup>

Although EPA could attempt to delay further reclassification of Uinta Basin, citizen groups would likely prevail in challenging such a delay as the CAA expressly requires EPA to reclassify nonattainment areas within six months of the attainment deadline.<sup>17</sup>

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<sup>1</sup>89 Fed. Reg. 97,545 (December 9, 2024).

<sup>2</sup>*Id.*

<sup>3</sup>42 U.S.C. § 7511a(c)(2)(B)

<sup>4</sup>*Id.* § 7511a(c)(3)(A)

<sup>5</sup>*Id.* § 7511a(c)(4)(A)

<sup>6</sup>The “major source” threshold for sources in Serious ozone nonattainment areas is 50 tpy. U.S.C. § 7511a.

<sup>7</sup>“Major modifications” are physical changes and certain types of

operational changes that meet “significance” thresholds under the CAA. 40 CFR 52.21(b)(2)(i).

<sup>8</sup>89 Fed. Reg. at 97,548.

<sup>9</sup>89 Fed. Reg. 101,483 (December 16, 2024).

<sup>10</sup>87 Fed. Reg. 60,897 (October 7, 2022).

<sup>11</sup>89 Fed. Reg. 25,216 (April 10, 2024).

<sup>12</sup>U.S.C. § 7511a(b).

<sup>13</sup>The “major source” threshold for Moderate ozone nonattainment areas is 100 tpy of ozone, VOC, or NOx. 42 U.S.C. § 7511a.

<sup>14</sup>See 7511(a)(1) (requiring moderate ozone nonattainment areas to achieve attainment within 6 years following the original designation date); 83 Fed. Reg. 25,776 (June 4, 2018) (designating the Uinta Basin as a nonattainment area for the 2015 ozone NAAQS).

<sup>15</sup>42 U.S.C. § 7511(b)(2).

<sup>16</sup>*Id.* § 7511a(c).

<sup>17</sup>*Id.* § 7511(b)(2)(A).

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