CENTER for BIOLOGICAL DIVERSITY Because life is good.

April 29, 2026

Lee Zeldin
EPA Administrator
Mailcode 1101A
1200 Pennsylvania Ave., NW
Washington, D.C. 20460

Sent via USPS Certified Mail and delivered via email to: Zeldin.lee@epa.gov

Re: Petition to Designate Permian Basin of Southeast New Mexico a Nonattainment Area Due to Ongoing Violations of Ozone Health Standards; Petition to Find New Mexico's State Implementation Plan is Failing to Attain and Maintain Ambient Air Quality Standards

Dear Administrator Zeldin:

Enclosed, please find a petition from the Center for Biological Diversity ("the Center"), Oilfield Witness, Citizens Caring for the Future ("CCFF"), Youth United for Climate Crisis Action ("YUCCA"), New Mexico Interfaith Power and Light, New Mexico Voices for Children, and WildEarth Guardians ("Guardians") ("Petitioners") requesting the U.S. Environmental Protection Agency ("EPA") designate the Permian Basin of southeast New Mexico, including Chaves, Eddy, Lea, and Roosevelt counties, a nonattainment area due to ongoing and severe violations of health standards for ground-level ozone.

As part of this petition, Petitioners further requests the EPA find that New Mexico's federally approved State Implementation Plan is failing to attain and maintain National Ambient Air Quality Standards ("NAAQS") under the Clean Air Act.

Exhibits to this petition have been mailed in hard copy and may also be downloaded from this online folder: https://drive.google.com/drive/folders/14vvWmfYvIY1DLIAXBQvBpSJAh85Sumx1?usp=drive_link.

Ozone levels in New Mexico's Permian Basin are currently violating the NAAQS and have been in violation for numerous years. This dangerous pollution has been fueled by the oil and gas industry's exorbitant emission of volatile organic compounds and nitrogen oxides, which react with sunlight to form ozone. It has also been exacerbated by the New Mexico Environment Department's failure to fulfill its duties under the state's Air Quality Control Act—which requires the Department to maintain compliance with the NAAQS through its permitting and enforcement practices—as well as the amplifying effect of climate change on ozone pollution.

Ozone pollution poses serious risks to human and environmental health. Ozone is a respiratory irritant, which at high levels can be lethal. Even at low concentrations, ozone is linked to difficulty breathing and shortness of breath, coughing and sore or scratchy throat, inflammation and damage of airways, aggravated lung diseases, severe asthma attacks, and

premature death. These impacts are most severe on the low-income communities and communities of color that live closest to oil and gas extraction. Ozone pollution can also impact plant and animal life, potentially destabilizing entire ecosystems.

In light of this air pollution crisis, we call on the EPA to provide relief. This petition follows a nonattainment petition submitted by WildEarth Guardians in 2021, as well as the EPA's stalled attempt to designate the area as nonattainment in 2022. As the EPA declined to declare New Mexico's Permian Basin a nonattainment area in response the 2021 petition, or to follow through on the 2022 redesignation attempt, NAAQS violations in the region have only grown more severe. The EPA must fulfill its duty under the Clean Air Act and declare a nonattainment zone now.

Thank you for your attention to this significant matter of human and environmental health.

Sincerely,

/s/ Gail Evans
Gail Evans
New Mexico Climate Director
Center for Biological Diversity

/s/ Sarah Baer
Sarah Baer
Legal Fellow
Center for Biological Diversity

cc via email:
Scott Mason, Regional Administrator, EPA Region 6
Michelle Lujan Grisham, Governor of the State of New Mexico
James Kenney, Secretary, New Mexico Environment Department
Stephanie Garcia Richard, Commissioner, New Mexico State Land Office
Erin Taylor, Acting Secretary, New Mexico Energy, Minerals and Natural Resources Department

BEFORE THE ADMINISTRATOR
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

In the Matter of: Designation of the New Mexico Permian Basin Ozone Nonattainment Area and Call for the Revision of New Mexico State Implementation Plan Over its Failure to Attain and Maintain the National Ambient Air Quality Standards for Ground-level Ozone	)	Rulemaking petition under the Administrative Procedure Act, 5 U.S.C. § 551, *et seq*., and the Clean Act Air Act, 42 U.S.C. § 7401, *et seq*. April 29, 2026

PETITION TO THE U.S. ENVIRONMENTAL PROTECTION AGENCY TO:[1]

(1) DESIGNATE THE PERMIAN BASIN OF SOUTHEAST NEW MEXICO AS NONATTAINMENT FOR THE OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS; AND

(2) REQUIRE THE REVISION OF THE NEW MEXICO STATE IMPLEMENTATION PLAN DUE TO ITS FAILURE TO ATTAIN AND MAINTAIN THE OZONE NATIONAL AMBIENT AIR QUALITY STANDARDS

The Center for Biological Diversity ("the Center"), Oilfield Witness, Citizens Caring for the Future ("CCFF"), Youth United for Climate Crisis Action ("YUCCA"), New Mexico Interfaith Power and Light, New Mexico Voices for Children, and WildEarth Guardians ("Guardians") (collectively, "Petitioners"), petition the Administrator of the United States Environmental Protection Agency ("EPA") under the Administrative Procedure Act ("APA"), 5 U.S.C. § 551, *et seq.*, the Clean Air Act ("CAA"), 42 U.S.C. § 7401, *et seq.* to designate New Mexico's Eddy, Lea, Chaves, and Roosevelt counties as nonattainment for ozone pursuant to

[1] Exhibits to this petition have been mailed in hard copy and may also be downloaded here: https://drive.google.com/drive/folders/14vvWmfYvIY1DLIAXBQvBpSJAh85Sumx1?usp=drive_link.

Section 107(d)(3) of the Clean Air Act, 42 U.S.C. § 7407(d)(3).[2] Petitioners also urgently petition the EPA to require the revision of the New Mexico State Implementation Plan ("SIP") pursuant to Section 110(k)(5) of the Clean Air Act. 42 U.S.C. § 7410(k)(5).

Ozone levels in the Permian Basin of southeast New Mexico are currently violating the National Ambient Air Quality Standards ("NAAQS") and have been in violation for numerous years. Driven by unprecedented levels of oil and gas extraction in Eddy, Lea, Chaves, and Roosevelt counties, ground-level ozone pollution, the key ingredient of smog, has increased to unhealthy levels in the Permian region. This dangerous pollution has been fueled by the oil and gas industry's exorbitant emission of volatile organic compounds ("VOCs") and nitrogen oxides ("NOx"), ozone precursor pollution which reacts with sunlight to form ozone. It has also been exacerbated by the New Mexico Environment Department's failure to fulfill its duties under the state's Air Quality Control Act—which requires the Department to maintain compliance with the NAAQS through its permitting and enforcement practices—as well as the amplifying effect of climate change on ozone pollution.

Ozone pollution poses serious risks to human and environmental health. Ozone is a respiratory irritant, which at high levels can be lethal. Even at low concentrations, ozone is linked to difficulty breathing and shortness of breath, coughing and sore or scratchy throat, inflammation and damage of airways, aggravated lung diseases, severe asthma attacks, and premature death. These impacts are most severe on the low-income communities and

[2] We also request the EPA assess whether it is necessary to include all or portions of neighboring Texas counties in any nonattainment area given their likely contribution to high ozone in southeast New Mexico. These counties similarly contain large amounts of oil and gas extraction activity and are no doubt responsible for producing air pollution that contributes to ozone violations in southeast New Mexico. These counties include, but are not limited to, Andrews, Borden, Cochran, Crane, Culberson, Dawson, Ector, Edwards, Gaines, Garza, Glasscock, Hale, Hockley, Howard, Irion, Lamb, Loving, Lubbock, Lynn, Martin, Midland, Pecos, Reagan, Reeves, Schleicher, Scurry, Sterling, Sutton, Terrell, Terry, Tom Green, Upton, Val Verde, Ward, Winkler, and Yoakum.

communities of color that live closest to oil and gas extraction. Children, the elderly, and people who are active or work outdoors are especially vulnerable to this pollution, according to EPA's own scientific reviews related to ozone. Ozone pollution can also impact plant and animal life, potentially destabilizing entire ecosystems.

To protect public and environmental health, the EPA established the latest primary and secondary NAAQS for ozone in 2015, limiting 8-hour concentrations to no more than 0.070 parts per million (ppm). For multiple years, all ozone monitors in southeast New Mexico, including two in Eddy County and one in Lea County, have demonstrated the region is violating the NAAQS. This means that the residents of these four counties are exposed to unhealthy levels of toxic air pollution; the air has become more and more dangerous to breathe in the past eight years. A nonattainment designation is required to return the region to attainment for ozone and prevent further harm to human health and the environment.

This petition follows a nonattainment petition submitted by WildEarth Guardians in 2021, as well as the EPA's stalled attempt to designate the area as nonattainment in 2022. As the EPA declined to declare New Mexico's Permian Basin a nonattainment area in response the 2021 petition, or to follow through on the 2022 redesignation attempt, NAAQS violations in the region have only grown more severe. The EPA must fulfill its duty under the Clean Air Act and declare a nonattainment zone now.

I. Petitioners

The Center for Biological Diversity

The Center for Biological Diversity is a national nonprofit environmental organization that works through science, law, and policy to protect the lands, water, air, and climate that all living species need to survive. The Center is incorporated in California and headquartered in

Tucson, Arizona. The Center has over 101,000 members, including over 1,600 members in New Mexico, and maintains offices across the United States and Baja California Sur, Mexico, including in New Mexico.

The Center's Climate Law Institute works to protect people, wildlife, and ecosystems from climate change and the deleterious effect on water, air, land, public health and cultural practices caused by the fossil fuel industry. The Climate Law Institute uses law, science, public education, and grassroots campaigns to curb pollution resulting from fossil fuel extraction and combustion that worsens climate change; pollutes our air, water, and land; and harms public health.

The Center has members who live, work, and recreate in New Mexico, including the Greater Carlsbad region of the State where the Permian Basin is located. Some of the Center's members live in Eddy County, in the Permian Basin, home to one of the largest oil fields in the world, where they and their family members suffer from the health impacts of oil and gas pollution, including ground-level ozone. For example, one member, who can see venting and flaring from oil and gas wells from their home, has asthma and frequent migraines. Other members experience headaches, eye nose and throat irritation and nausea when they are working in the area. The Center's members who live, work, visit or recreate in the Permian region of New Mexico are harmed by the EPA's failure to designate a nonattainment area and bring the region back into compliance with the ozone NAAQS; they are exposed to unhealthy air daily.

The names and addresses to whom correspondence regarding this petition should be directed is as follows:

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Oilfield Witness

Oilfield Witness deploys its expertise in using advanced imaging technology to reveal the invisible dirty secrets of pollution in the oil and gas industry. The organization leverages this evidence, alongside its expertise and research, to inform and activate impacted communities and policy makers – aiming to fast track the phase out of fossil fuels and accelerate the transition to renewable energy. Oilfield Witness's work in the oil fields provides a first-hand experience with the air pollution issues in the Permian basin. In 2024 the organization released the report "Unmonitored and Unregulated" which documented the issues with air pollution from Permian oil and gas production.

Youth United for Climate Crisis Action

Youth United for Climate Crisis Action ("YUCCA") is a youth-led movement of BIPOC young people from across so-called New Mexico organizing for climate and environmental justice. Together, YUCCA fights for a future where our communities, not corporations, billionaires, or those in positions of structural power and privilege, control the decisions that shape our lives – a future beyond the systems of oppression that have harmed our communities for generations. In New Mexico, those systems show up as unchecked industry pollution, worsening climate-induced natural disasters, and poisoned air and water in regions like the Permian Basin, where unprecedented levels of oil and gas extraction continue to expose frontline communities and young people to dangerous levels of toxic pollution. As YUCCA organizes for a world where impacted communities – not profit and extraction – guide the path forward, the

organization calls on the EPA to fulfill its duty to protect human health and the environment by taking urgent action to improve air quality in the New Mexico Permian Basin.

Citizens Caring for the Future

Citizens Caring for the Future ("CCFF") is the only frontline community environmental non-profit in the New Mexico Permian Basin. The organization is fiscally sponsored by New Mexico and El Paso Interfaith Power and Light. CCFF's members live, work, go to school, and recreate throughout the NM Permian Basin, including in Eddy, Chaves, and Lea counties. CCFF's objective as an organization is to protect its members air, land, water, and health amidst the oil and gas boom currently happening in New Mexico's Permian.

New Mexico Interfaith Power and Light

New Mexico Interfaith Power and Light mobilizes people of faith and conscience across the state for climate action and environmental justice because the organization believes that each and every one of us is called to nurture and protect this sacred creation upon which we all depend. Siblings in the Permian have long been sacrificed for oil and gas extraction and have long been overburdened with air pollution in their day to day lives. This reality cannot continue to go unaddressed and remediated. Profit cannot continue to be prioritized over people's lives and health. As people of faith, our common humanity and shared dignity call on Interfaith Power and Light to advocate with communities in the Permian and everywhere until all can experience the fundamental right to breathe air that is healthy and safe to breathe.

New Mexico Voices for Children

New Mexico Voices for Children is a nonpartisan, statewide advocacy organization that works to create systems-level sustainable change to improve the lives of New Mexico's children. The organization's work on both public health and environmental health and justice brings

attention to the Permian Basin where air quality is consistently over safe thresholds to breathe. Communities in the area have far too long been exposed to unhealthy levels of toxic air pollution, including ozone. Current ozone levels in the four counties that make up the Permian Basin violate the NAAQS and have been in violation for numerous years. New Mexico Voices for Children urges the EPA to urgently take up this petition to designate the four counties in the Permian Basin a nonattainment zone and require the State of New Mexico revise its State Implementation Plan. These measures would help improve the air quality for over 65,000 children in the region and make New Mexico a better place to grow up for future generations.

WildEarth Guardians

WildEarth Guardians ("Guardians") is a nonprofit environmental advocacy organization dedicated to protecting public lands, wildlife, and the health of communities across the American West through science, policy, and law. In New Mexico, Guardians has conducted extensive analysis of oil and gas pollution, including air emissions and waste releases in the Permian Basin, and has advocated for stronger enforcement and regulatory safeguards. Guardians has a direct interest in improving air quality in the region because its members live, work, and recreate in affected communities and are exposed to elevated levels of ozone and other harmful pollutants associated with oil and gas activities. Ensuring attainment and maintenance of the NAAQS in the Permian Basin is essential to protecting public health and the environment and to ensuring that federal and state agencies comply with their obligations under the Clean Air Act. Guardians previously petitioned the EPA to designate the New Mexico portion of the Permian Basin as nonattainment for ozone pollution in 2021, and has a continued interest in ensuring that the Agency addresses persistent and worsening violations of the NAAQS.

II. The EPA Must Designate Areas that Do Not Comply with the NAAQS as Nonattainment Areas

A. *The NAAQS set the legal threshold for air quality*

Under the Clean Air Act, the EPA Administrator identifies criteria air pollutants that may reasonably be anticipated to endanger public health and welfare. *See* 42 U.S.C. § 7408(a)(1). Once criteria air pollutants are identified, the EPA is required to promulgate NAAQS for such pollutants. *See* 42 U.S.C. § 7409(a). The EPA is obligated to establish primary NAAQS for a criteria pollutant at a level "requisite to protect the public health." *Id*. at § (b)(1). The EPA is also obligated to establish secondary NAAQS for a criteria pollutant at a level "requisite to protect the public welfare[.]" *Id*. at § (b)(2). Welfare "includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being[.]" *Id*. at § 7602(h).

Once a NAAQS is promulgated, the EPA must initially identify areas that meet or do not meet the NAAQS within two years. *See* 42 U.S.C. § 7407(d). Any area not meeting the NAAQS is considered to be in nonattainment. *Id*. at § (d)(1)(A)(i). Furthermore, any area that contributes to ambient air quality in a nearby area that does not meet the NAAQS is also considered to be in nonattainment. *Id*.

If air quality data indicates an attainment area is not meeting the NAAQS, the EPA has a duty to redesignate the area to nonattainment. *See* 42 U.S.C. § 7407(d)(3). To do so, the EPA must first notify the Governor of a state that available information indicates the designation of the area must be revised from attainment to nonattainment. *Id*. at §§ 7407(d)(3)(A);

7407(d)(4)(A).[3] Such a notification triggers a 120-day deadline by which the Governor must submit a redesignation to the EPA. *Id*. at § 7407(d)(3)(B); 7407(d)(4)(A). Whether or not the Governor responds, the EPA must promulgate a redesignation within 240 days. *Id.* at §§ 7407(d)(3)(C); 7407(d)(4)(A).

B. *The 2015 Ozone NAAQS require compliance with a 0.070 ppm design value*

In 1971, the EPA identified ground-level ozone as a criteria air pollutant and promulgated the ozone NAAQS accordingly. *See* 36 Fed. Reg. 8,186 (Apr. 30, 1971). Responding to mounting scientific data showing a need for stronger NAAQS, in 2015 the EPA strengthened the primary and secondary NAAQS for ozone to an 8-hour standard of no more than 0.070 ppm. 80 Fed. Reg. 65,292 (Oct. 26, 2015). As part of its rationale for the strengthened standard, the EPA found that "a very large amount of evidence spanning several decades supports a relationship between exposure to O_3 and a broad range of respiratory effects." Preamble to 40 C.F.R. § 50. Further, the EPA found that current evidence is suggestive of "causal relationships with short-term (central nervous system effects) and long-term exposures (cardiovascular effects, reproductive and developmental effects, central nervous system effects and total mortality)." *Id.*

Based on the 2015 standard, a region violates the ozone NAAQS whenever the three-year average of the annual fourth-highest daily maximum 8-hour average concentration is greater than 0.070 ppm. *See* 40 C.F.R. § 50.19(b). The EPA refers to this three-year average as a "design value." 40 C.F.R. § 51.1100(e).

The EPA uses ozone monitors to measure compliance. Ozone monitors measure ground-level ozone in the air using scientific methods specified under 40 C.F.R. § 50.10, Appendix D.

[3] Moreover, the governor may, on her own motion, request the EPA redesignate an area to nonattainment. 42 U.S.C. § 7407(d)(3)(D).

The ozone monitors measure ambient concentrations on an hourly basis to calculate the 24 separate rolling 8-hour averages for each day. 40 C.F.R. § 50, Appendix P, at 2.1.

The Clean Air Act directs the EPA to initially classify redesignated ozone nonattainment areas based on the severity of the NAAQS violation. 42 U.S.C. § 7511(b)(1). For example, for a region like New Mexico's Permian Basin, that has 8-hour ozone design values between 0.071 and 0.081 ppm, the Clean Air Act requires a "marginal" classification to start with. 42 U.S.C. § 7511(a)(1); *see also* 40 C.F.R. 51.1303 (describing nonattainment classifications for 2015 Ozone NAAQS). Once the EPA designates and classifies an ozone nonattainment area, states must bring the area into attainment by a certain date prescribed by the Clean Air Act. 42 U.S.C. § 7511(a)(1); 40 C.F.R. § 51.1303. A marginal nonattainment area—such as New Mexico's Permian region—is required to attain the NAAQS "as expeditiously as practicable" but has at most three years to return to compliance. 40 C.F.R. § 51.1303.

There are several levels of nonattainment under the Clean Air Act, and if an area continues to fail to meet a NAAQS by its statutory deadlines, it is "downgraded" through these classifications. Ozone nonattainment areas can be classified as Marginal, Moderate, Serious, Severe, or Extreme. 42 U.S.C. § 7511(a)(1).

Finally, upon the EPA's redesignation of a region to nonattainment for ozone, and as a nonattainment area's classification worsens, a state must revise its State Implementation Plan ("SIP") corresponding to the severity of nonattainment. 42 U.S.C. § 7511(a). For marginal nonattainment areas like New Mexico's Permian, the SIP revisions must contain evidence of corrective measures taken with respect to control technology, vehicle inspections and emissions, enhanced permitting requirements for stationary sources, and periodic inventories. *Id.* § 7511a(a).

C. The EPA must call for a revision of a SIP if it is substantially inadequate

Under the Clean Air Act, a state must prepare and submit a SIP to the EPA to attain and maintain the primary and secondary NAAQS, including the ozone NAAQS. 42 U.S.C. § 7410(a). The SIP is a living document that the state and the EPA can and must revise as necessary. The Clean Air Act requires the EPA to call for SIP revisions when a SIP is substantially inadequate to attain or maintain the NAAQS. 42 U.S.C. § 7410(k)(5).

D. The EPA has a legal duty to act on this rulemaking petition

The Center and co-petitioners petition the EPA pursuant to the APA's rule-making provisions. *See* 5 U.S.C. § 553(e) ("Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."). The Center—an organization that works to protect the environment and human health, and that has members based in New Mexico's Permian Basin—along with co-petitioners who also have an interest in protecting air quality in the region, request that the EPA amend 40 C.F.R. § 81.332 to identify Chaves, Eddy, Lea, and Roosevelt counties as nonattainment for the 2015 8-hour ozone NAAQS. Further, Petitioners request that the EPA require New Mexico to revise its SIP. Upon promulgating a call for New Mexico to revise its SIP, EPA must review and ultimately adopt a SIP revision, which will have the effect of revising 40 C.F.R. § 51.1620, *et seq*.

Under the APA, the Administrator has a nondiscretionary duty to "conclude a matter presented to it" in "a reasonable time." 5 U.S.C. § 555(b). A reasonable time is "is typically counted in weeks or months, not years." *In re Am. Rivers & Idaho Rivers United*, 372 F.3d 413, 419 (D.C. Cir. 2004).

Given the urgency of the human and environmental health harms at stake, Petitioners request that the EPA provide an immediate acknowledgment that this petition has been received;

notify the Governor of New Mexico within one month of receipt of this petition that available information indicates that Chaves, Eddy, Lea, and Roosevelt counties must be redesignated from attainment to nonattainment; request the Governor to respond within one month of this notification; and promulgate a redesignation no later than 240 days from notification. 42 U.S.C. at § 7407(d)(3)(C).

Further, Petitioners request that the EPA notify the State of New Mexico within three months of receipt of this petition that its SIP is substantially inadequate and must be revised within 3 months of notification.

III. Ozone Pollution in New Mexico's Permian Basin Violates the NAAQS and Causes Human and Environmental Health Harms

The Center and co-petitioners petition the EPA to designate Chaves, Eddy, Lea and Roosevelt counties ("New Mexico's Permian Basin counties") of southeast New Mexico as a nonattainment area for the 2015 ozone NAAQS. The EPA has a legal duty to designate a nonattainment area due to the long-standing and extreme exceedances of the 2015 ozone NAAQS documented by EPA air monitors in the region. Further, the need to redesignate these counties is urgent due to the severe human and environmental health consequences of the pollution crisis.

Location of Chaves, Eddy, Lea, and Roosevelt Counties, the New Mexico Permian Basin

A. EPA air monitors have extensively documented ozone NAAQS violations

Current air monitoring data demonstrates that New Mexico's Permian Basin counties require a nonattainment designation. Almost ten years ago, in 2017, the EPA designated Chaves, Lea, Eddy, and Roosevelt counties as attainment/unclassifiable under the 2015 NAAQS revision for ground-level ozone. Air Quality Designations for the 2015 Ozone NAAQS, 82 Fed. Reg. 54,232, 54,263–64 (Nov. 16, 2017). However, ozone pollution in the area has skyrocketed since this designation, primarily due to the explosion of oil and gas extraction in New Mexico's Permian. Oil and gas extraction has increased approximately six-fold since the counties' initial designation, with emissions having dramatically increased as well. Thus, overwhelming evidence supports redesignation to nonattainment.

Location of ozone monitors (red place-markers) in the Permian Basin of southeast New Mexico[4]

[4] Air monitor location data queried from *Interactive Map of Air Quality Monitors*, U.S. Envt'l Prot. Agency (Aug. 11, 2025), https://www.epa.gov/outdoor-air-quality-data/interactive-map-air-quality-monitors).

Based on EPA data, the three primary air monitors in New Mexico's Permian Basin are all currently in violation of the NAAQS.

Fourth Max. and Design Value Data for Eddy and Lea County Ozone Monitors[5]

County	Monitor ID	2022 4th Highest	2023 4th Highest	2024th Highest	2022–2024 Design Value
Eddy (Carlsbad)	350151005	0.079 ppm	0.076 ppm	0.084 ppm	0.079 ppm
Eddy (Carlsbad Caverns)	350150010	0.083 ppm	0.076 ppm	0.082 ppm	0.080 ppm
Lea (Hobbs)	350250008	0.072 ppm	0.074 ppm	0.072 ppm	0.072 ppm

These elevated ozone pollution levels are not anomalous. Ozone levels in Eddy and Lea counties have increased dramatically over the last decade.[6] The Carlsbad and Hobbs ground-level ozone monitors have recorded design values in exceedance of 0.070 ppm for the years 2017 through 2025,[7] while the Carlsbad National Park ground-level ozone monitor has recorded design values in exceedance of 0.070 ppm for the years 2018 through 2025.[8] As Petitioners explain further below, this worsening of ozone pollution coincides with an increase in oil and gas extraction in the region.

[5] Design and monitor value data queried from *2024 Design Value Interactive Tool*, U.S. Envt'l Prot. Agency, https://www.epa.gov/air-trends/air-quality-design-values (last accessed Feb. 17, 2026) and *Monitor Values Report*, U.S. Env't Prot. Agency, https://www.epa.gov/outdoor-air-quality-data/monitor-values-report (last accessed Feb. 17, 2026).

[6] *Id*.

[7] 2020 readings from the Hobbs air monitor present the sole exception to this trend, likely due to the significant decrease in oil and gas production at the start of the COVID-19 pandemic. *See* Exhibit 1, *U.S. Crude Oil Production Fell by 8% in 2020, the Largest Annual Decrease on Record*, U.S. Energy Info. Admin., https://www.eia.gov/todayinenergy/detail.php?id=50621 (last accessed Feb. 17, 2026).

[8] *See* note 5, *supra*.

Carlsbad, NM 8-Hour Ozone Readings (in ppm), 2015-2024[9]

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
1st Max.	0.069	0.065	0.082	0.096	0.095	0.075	0.092	0.084	0.081	0.097
2nd Max.	0.068	0.064	0.078	0.095	0.092	0.075	0.082	0.083	0.079	0.089
3rd Max.	0.067	0.064	0.077	0.091	0.084	0.075	0.080	0.080	0.079	0.085
4th Max.	0.067	0.063	0.076	0.083	0.080	0.073	0.080	0.079	0.076	0.084
Number of Days Above NAAQS	0	0	10	18	19	5	23	23	18	22

Carlsbad Caverns National Park 8-Hour Ozone Readings, 2015-2024[10]

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
1st Max.	0.068	0.070	0.069	0.099	0.082	0.074	0.085	0.086	0.083	0.094
2nd Max.	0.068	0.069	0.065	0.081	0.080	0.074	0.080	0.085	0.077	0.091
3rd Max.	0.065	0.069	0.065	0.080	0.078	0.073	0.079	0.084	0.076	0.090
4th Max.	0.065	0.069	0.065	0.080	0.074	0.072	0.077	0.083	0.076	0.082
Number of Days Above NAAQS	0	0	0	10	6	9	15	21	11	28

Hobbs, NM 8-Hour Ozone Readings (in ppm), 2015-2024[11]

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
1st Max.	0.070	0.069	0.080	0.083	0.082	0.062	0.086	0.075	0.080	0.085
2nd Max.	0.069	0.066	0.074	0.078	0.075	0.060	0.075	0.075	0.077	0.076
3rd Max.	0.069	0.065	0.072	0.077	0.073	0.060	0.072	0.074	0.076	0.075
4th Max.	0.067	0.065	0.069	0.076	0.070	0.060	0.068	0.072	0.074	0.072
Number of Days Above NAAQS	0	0	3	6	3	0	3	4	6	5

The region's ozone problem persists to this day. The table below presents ozone exceedance data for the Carlsbad, Carlsbad Caverns National Park, and Hobbs monitors for 2025, which will be finalized as of May 1, 2026.

[9] *Id.*
[10] *Id.*
[11] *Id.*

Eddy & Lea County 8-Hour High Ozone Readings (in ppm) in 2025[12]

	Carlsbad	Carlsbad Caverns Natl. Park	Hobbs
1st Max.	0.083	0.083	0.074
2nd Max.	0.079	0.081	0.067
3rd Max.	0.078	0.080	0.063
4th Max.	0.076	0.079	0.062
Number of Days above NAAQS	11	15	1

Based on extensive quantitative monitoring data, the region "does not meet . . . the national primary or secondary ambient air quality standard for the pollutant." 42 U.S.C. § 7407(d)(1)(A)(i). In 2022, the EPA acknowledged this reality and provided notice that the Agency was considering a discretionary redesignation of the region "based on current monitoring data and other air quality factors."[13] Public statements made by New Mexico Environment Department Secretary James Kenney in 2023 indicated that the EPA was still pursuing redesignation based on air quality data and the oil and gas industry's contribution to area air pollution.[14] Since then, air quality has further deteriorated, but the EPA has still failed to act. Given persistent and ongoing violations of the ozone NAAQS, the EPA must act now and redesignate New Mexico's Permian Basin counties to nonattainment for the 2015 8-hour ozone NAAQS.

B. Persistent ozone NAAQS violations have severe human health impacts

[12] *Id.*
[13] Exhibit 2, *Redesignation of Portions of the Permian Basin for the 2015 Ozone National Ambient Air Quality Standards (NAAQS)*, https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202204&RIN=2060-AV68 (last visited Apr. 16, 2026).
[14] Exhibit 3, N. Jones, *EPA will crack down on Permian Basin air pollution, state Environment secretary says — and NM isn't ready, KUNM* (Feb. 7, 2023, 13:56 MT), https://www.kunm.org/local-news/2023-02-07/epa-will-crack-down-on-permian-basin-air-pollution-this-year-and-top-official-says-state-not-ready.

The need for EPA action is urgent due to the significant risks that ground-level ozone poses to human health and the environment. The American Lung Association ("ALA") describes breathing ground-level ozone as a "'sunburn' of the lung[s]."[15] Even short-term exposure to ozone can cause a variety of health impacts, including increasing the lungs' susceptibility to infection and aggravating lung diseases such as asthma, emphysema, and chronic bronchitis. Long-term ozone exposure can cause permanent damage to the airways, and may lead to pulmonary and cardiovascular disease, increased likelihood of reproductive and developmental harms, and/or premature death.[16] A 2023 study in *Environmental Research Health* found that ozone pollution from oil and gas production specifically contributes to 35% of all health impacts from U.S. oil and gas sector air pollution, including new cases of childhood asthma and excess deaths.[17]

In addition, the pollutants that combine to create ozone—volatile organic compounds and nitrogen oxides—are linked to a wide range of short- and long-term health effects. "Breathing [volatile organic compounds] can irritate the eyes, nose, and throat, can cause difficulty breathing or nausea, and can damage the central nervous system and other organs."[18] Similarly, nitrogen oxides can increase the risk of a range of harmful effects on the lungs, as well as the likelihood of respiratory-related emergency department and hospital admissions. Breathing nitrogen dioxide can also impact pregnancy and birth outcomes.[19]

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[15] Exhibit 4, *Health Risks of Ozone Pollution*, Am. Lung Ass'n (Apr. 2016), https://www.lung.org/getmedia/e4093c33-489b-434d-8bfb-1b06762cf971/ozone-pollution-fact-sheet.
[16] *Id.*; Exhibit 5, *Health Effects of Ozone Pollution*, U.S. Envt'l Prot. Agency (Mar. 13, 2025), https://www.epa.gov/ground-level-ozone-pollution/health-effects-ozone-pollution.
[17] Exhibit 6, J. Buonocore et al., *Air Pollution and Health Impacts of Oil & Gas Production in the U.S.*, U.S. Envt'l Research Health (2023).
[18] Exhibit 7, *Volatile Organic Compounds,* Am. Lung Ass'n (Oct. 21, 2024), https://www.lung.org/clean-air/indoor-air/indoor-air-pollutants/volatile-organic-compounds.
[19] Exhibit 8, *Nitrogen Dioxide*, Am. Lung Ass'n (Oct. 26, 2023), https://www.lung.org/clean-air/outdoors/what-makes-air-unhealthy/nitrogen-dioxide.

Health risks are most acute to certain populations, including those with existing respiratory conditions, children, seniors, low-income communities, and people of color.[20] Low-income and communities of color tend to experience disproportionately higher levels of air pollution.[21] With regards to ozone, reports have found a high association between racial isolation and elevated pollution levels, particularly in the rural and suburban western United States.[22] The ALA identifies thousands of individuals in these groups who are particularly at risk due to unhealthy levels of ozone air pollution in Eddy and Lea counties alone.[23]

Eddy and Lea County Ozone-Specific Epidemiological Data (2026)[24]

	Eddy County	Lea County
Children Under 18	15,899	21,498
Adults 65 & Over	9,349	8,792
Pediatric Asthma	871	1,178
Adult Asthma	4,728	5,537
COPD	2,799	3,076
Lung Cancer	19	23
Cardiovascular Disease	3,361	3,527
Pregnancy	607	767
Poverty Estimate	9,810	11,871
People of Color	34,401	53,143

The ALA applies the EPA's Air Quality Index, which uses colors to connote the degree of health risk associate with ozone pollution. Orange days, with ozone levels between 71 and 85 parts per billion, are unhealthy for sensitive groups, including children, individuals over 65, pregnant people and fetuses, people who live and work outside, and people with existing lung

[20] Exhibit 9, *Health Impact of Air Pollution*, Am. Lung Ass'n, https://www.lung.org/research/sota/health-risks (last accessed Apr. 27, 2026).
[21] Exhibit 10, M.L. Miranda, S.E. Edwards, M.H. Keating, and C.J. Paul, *Making the envt'l justice grade: the relative burden of air pollution exposure in the U.S.*, 8 Int. J. Environ. Res. Public Health 1755, 1757 (2011).
[22] Exhibit 11, M.A. Bravo, R. Anthopolos, M.L. Bell, M.L. Miranda, *Racial isolation and exposure to airborne particulate matter and ozone in understudied U.S. populations: envt'l justice applications of downscaled numerical model output*, 92-93, *Env. Int.*, 247, 247-48 (2016).
[23] Exhibit 12, *State of the Air: Eddy County*, Am. Lung Ass'n, http://www.stateoftheair.org/city-rankings/states/new-mexico/eddy.html (last visited Apr. 27, 2026); Exhibit 13, *State of the Air: Lea County*, Am. Lung Ass'n, https://www.lung.org/research/sota/city-rankings/states/new-mexico/lea (last visited Apr. 27, 2026).
[24] *Id.*

diseases like asthma. Red days, with ozone levels between 86 and 105 parts per billion, are unhealthy for the population at large.[25]

Between 2014 and 2016, Eddy and Lea counties had a combined 6 "orange" and zero "red" days. Between 2016 and 2018, Eddy and Lea counties had 36 "orange" days and 3 "red" days. Between 2018 and 2020, Eddy and Lea counties had 54 "orange" days and 5 "red" days. Between 2021 and 2023, Lea and Eddy counties had 82 "orange" days and 3 "red" days.[26] Between 2022 and 2024, Lea and Eddy counties had 92 "orange" days and 4 "red" days.[27]

Most recently, Eddy and Lea counties both received "F" marks for ozone pollution on the American Lung Association's 2026 State of the Air Report Card.[28] This marked the seventh consecutive year that Eddy received an "F" rating, representing a significant drop from its "C" rating in 2018. Lea's "F" mark represented a continued downgrade from "D" ratings in 2020 and 2022 to 2024 (interrupted by another "F" in 2021) and a "C" rating in 2019. Each grade represents a weighted average of the number of high ozone days in the county multiplied by the level of severity of the ozone pollution.[29] "F" is the worst grade that can be received, connoting multiple high-ozone days with health risks for both at-risk populations and the general populace.[30]

Additionally, in 2021, Eddy County made the ALA's list of "Most Polluted Places to Live" and ranked twenty-fourth in the U.S. for ozone pollution—one of only two rural counties

[25] Exhibit 14, *Methodology*, Am. Lung Ass'n, https://www.lung.org/research/sota/about-the-report/methodology (last visited Feb. 27, 2026).
[26] Data queried from *Past "State of the Air" Reports*, Am. Lung Ass'n, https://www.lung.org/research/sota/for-the-media/past-sota (last visited Apr. 27, 2026).
[27] *See* note 23, *supra*.
[28] Exhibit 15, *Report Card: New Mexico*, Am. Lung Ass'n (2026), https://www.lung.org/research/sota/city-rankings/states/new-mexico.
[29] *See* note 25, *supra.*
[30] *Id.*

in the country in the top 25 most polluted for ozone.[31] It has steadily climbed in position on the list since, ranking twenty-second in 2022, eighteenth, in 2023, seventeenth in 2024, and fifteenth in 2025.[32] As of 2026, it has climbed to twelfth.[33]

The ALA's analysis merely confirms the reality already demonstrated by EPA air monitors – persistent ozone NAAQS violations pose severe and increasing risks to human health throughout New Mexico's Permian region.

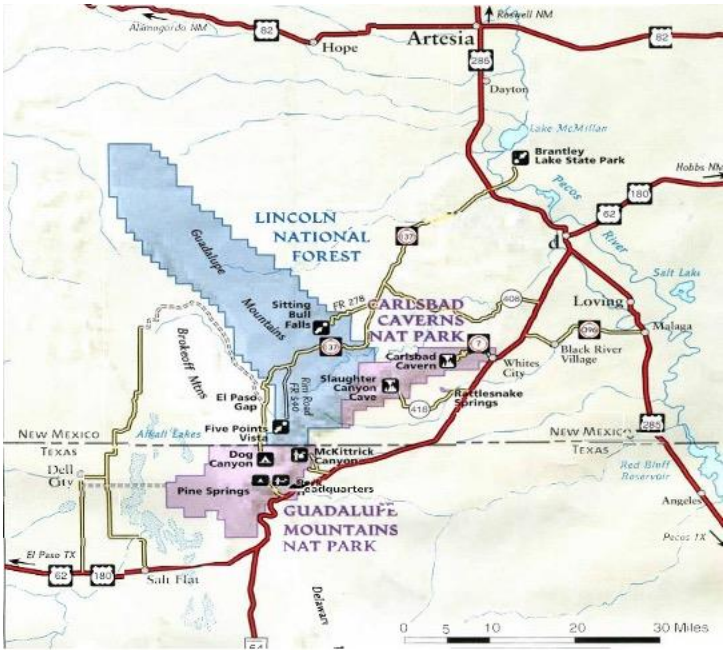
C. Persistent ozone NAAQS violations have severe environmental impacts

In addition to its harmful effects on human health, ground-level ozone also poses a risk to the environment, reducing plants' productivity and disturbing the stability of entire ecosystems.[34] This poses a particular risk to sensitive Ponderosa Pine (*Pinus ponderosa*) biotic communities in the Permian region's "desert island" mountain ranges.[35]

Currently, Ponderosa Pine communities exist within Carlsbad Caverns National Park[36] and Guadalupe Mountains National Park,[37] both of which are famed for their sensitive and rare

[31] Exhibit 16, *State of the Air: 2021 Report*, Am. Lung Ass'n 18 (2021), https://www.lung.org/getmedia/17c6cb6c-8a38-42a7-a3b0-6744011da370/SOTA-2021.pdf; Exhibit 17, Adrian Hedden, *Eddy County Oil and Gas Drives Some of the Worst Air Pollution in New Mexico, Study Says*, The Herald-Times (April 21, 2023, 7:01 AM ET), https://www.heraldtimesonline.com/story/news/2023/04/21/oil-gas-eddy-county-air-pollution-new-mexico-fossil-fuel-permian-basin-american-lung-association/70126496007/.
[32] *See* note 26, *supra.*
[33] Exhibit 18, *Most Polluted Places to Live: Ozone*, Am. Lung Ass'n, https://www.lung.org/research/sota/key-findings/most-polluted-places (last visited Apr. 27, 2026).
[34] Exhibit 19, *Health & Environmental Effects of Ozone Pollution*, California Air Resources Board (Nov. 6, 2020), https://ww2.arb.ca.gov/resources/fact-sheets/health-effects-ozone.
[35] Exhibit 20, *Ecosystem Effects of Ground-Level Ozone*, U.S. Envt'l Prot. Agency, https://www.epa.gov/ground-level- ozone-pollution/ecosystem-effects-ozone-pollution (last accessed Feb. 27, 2026); Exhibit 21, *Ozone Effects on Plants*, Nat. Park Serv., https://www.nps.gov/subjects/air/nature-ozone.htm (last accessed Feb. 27, 2026).
[36] Exhibit 22, *Vascular Plants of Carlsbad Caverns National Park*, Nat. Park Serv. (May 6, 2025), https://www.nps.gov/cave/learn/nature/plants.htm.
[37] Exhibit 23, *Trees, Guadalupe Mountains*, Nat. Park Serv. (Aug. 13, 2023), https://www.nps.gov/gumo/learn/nature/trees.htm.

ecosystems.[38] Ground-level ozone negatively impacts the viability of plant and tree species such as the Ponderosa Pine by reducing the size of stomata in the leaves or needles—the microscopic boundaries where trees and plants exchange gases with the atmosphere. As the stomata close, the trees experience diminished capacity to assimilate carbon.[39] Thus, carbon dioxide levels increase in the surrounding atmosphere. In the long-term, ground-level ozone damages the needles of the Ponderosa pine, inhibiting growth, and potentially inducing a cascade of biotic shifts in the area.[40]



Map of Carlsbad area, including Carlsbad Caverns and Guadalupe Mountains National Parks

[38] Carlsbad Cavern National Park and Guadalupe Mountains National Park are classified as Class I air pursuant to the Clean Air Act's 1990 Amendments. *See* Exhibit 24, *NPS Class I Areas*, Nat. Park Serv. (Nov. 18, 2025), https://www.nps.gov/subjects/air/npsclass1.htm.

[39] Exhibit 25, S.Fares et al., *Tropospheric Ozone Reduces Carbon Assimilation in Trees: Estimates from Analysis of Continuous Flux Measurements*, 19 Global Change Biology 2427 (2013) (reporting 12–19% reduction in carbon assimilation in Ponderosa pine at ground-level ozone concentrations of between 60 and 100 ppb).

[40] Exhibit 26, K. Stolte, *Symptomology of Ozone Injury to Pine Foliage* 1, 18, U.S. Forest Service (1996), https://www.fs.usda.gov/psw/publications/documents/psw_gtr155/psw_gtr155_stolte.pdf.

The serious health and environmental consequences currently facing New Mexico's Permian Basin add urgency to the EPA's duty to designate the region as a nonattainment area. The designation is required to mitigate the area's decade-long ozone pollution problem and prevent further harms to humans and the environment.

IV. The Permian Basin's Ozone Crisis is Driven by Unchecked Fossil Fuel Extraction, New Mexico's Failure to Fulfill Its Legal Duties, and Climate Change

The ozone pollution crisis in New Mexico's Permian Basin is fueled by an ongoing explosion of oil and gas extraction, the New Mexico Environment Department's ("NMED's") failure to fulfill its duties under the state's Air Quality Control Act— which requires the Department to maintain compliance with the NAAQS through permitting and enforcement practices—and the compounding effects of climate change on ozone pollution. These factors combine to produce persistent and ongoing ozone pollution that violates the NAAQS. Thus, the EPA must redesignate New Mexico's Permian Basin counties as a nonattainment area.

A. Skyrocketing oil and gas production has led to skyrocketing ozone-precursor emissions

New Mexico's Permian Basin, including Chaves, Eddy, Lea, and Roosevelt counties, has experienced explosive growth in oil and gas production in recent years.[41] New Mexico has been the fastest growing oil-producing state in the country and now ranks second in oil production overall, behind Texas.[42] In the first half of 2025, New Mexico's annual crude oil production

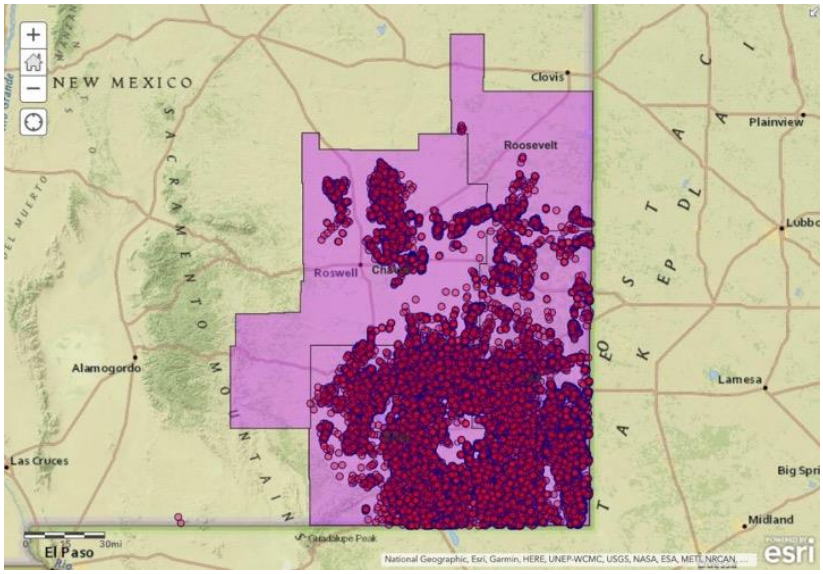
[41] The Permian Basin of New Mexico centers on Eddy and Lea counties, but due to increased oil and gas production in Chaves and Roosevelt counties, and their proximity to dangerous ozone concentrations in Eddy and Lea, the EPA should redesignate all four counties as nonattainment areas. *See* Exhibit 27, J. Grant, R. Parikh, A. Bar-Ilan, *Future Year 2028 Emissions from Oil and Gas Activity in the Greater San Juan Basin and Permian Basin*, Bureau of Land Management, Western States Air Resources Council, and Western Regional Air Partnership (Aug. 2018), https://www.wrapair2.org/pdf/SanJuan_Permian_Futureyear_EI_Report_21Aug2018.pdf.

[42] Exhibit 28, *New Mexico*, U.S. Energy Info. Admin, https://www.eia.gov/states/nm/rankings (last visited Apr. 15, 2026).

reached an all-time high of over 2.1 million barrels per day, double its 2020 production levels, over five times its 2015 production levels, and 12 times its 2010 production levels.[43] Most of the increased oil output came from Eddy and Lea counties, which have experienced a nearly six-fold increase in oil production over the past decade (since 2015), and are now the second and third largest oil-producing counties in the U.S.[44]

New Mexico has also been the fastest growing gas-producing state in the country in recent years, ranking fourth in gas production overall behind Texas, Pennsylvania, and Louisiana.[45] In the first half of 2025, New Mexico's annual gas production reached an all-time high of 10.6 billion cubic feet per day, double its 2020 production levels and triple its 2010 production levels.[46] As with oil production, most of the increased gas output came from Eddy and Lea counties, which together have experienced a more-than six-fold increase in gas production over the past decade (since 2015).[47]

[43] Data queried from *New Mexico Crude Oil and Petroleum Products Data*, U.S. Energy Info. Admin, https://www.eia.gov/states/nm/data/dashboard/crude-oil-petroleum (last visited Apr. 15, 2026).
[44] Data queried from *Lea County, NM*, Mineral Answers, https://www.mineralanswers.com/new-mexico/lea-county#production-card (last visited Apr. 15, 2026) and *Eddy County, NM*, Mineral Answers https://www.mineralanswers.com/new-mexico/eddy-county#production-card (last visited Apr. 15, 2026).
[45] *New Mexico*, *supra* at note 42.
[46] Data queried from *New Mexico Natural Gas Data*, U.S. Energy Info. Admin., https://www.eia.gov/states/nm/data/dashboard/natural-gas (last visited Apr. 15, 2026).
[47] *See* note 44, *supra*.



Active oil, gas, and injection wells in the Permian Basin Counties of southeast New Mexico[48]

The EPA has identified oil and gas production as the primary industrial producer of VOCs—one of two groups of ground-level ozone precursors.[49] VOCs are not only considered ozone precursor pollutants, but they include a number of compounds known to be incredibly toxic and dangerous to human health, including benzene, formaldehyde, xylene, and toluene.[50] Moreover, the industry emits huge amounts of NOx directly from internal combustion engines involved in the transport of materials, water, and hydrocarbons, and indirectly from downstream fossil fuel combustion.[51] Sources of air pollution associated with oil and gas extraction do not directly emit ozone into the atmosphere. Instead, internal combustion engines, drilling, hydraulic

[48] Note: this figure was taken from WildEarth Guardian's 2021 Nonattainment Petition. Since 2021, the Permian Basin counties have only become more saturated with active wells.
[49] Exhibit 29, *Controlling Air Pollution from the Oil and Natural Gas Industry*, U.S. Envt'l Prot. Agency, https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/basic-information-about-oil-and-natural-gas (last visited Apr. 15, 2026).
[50] Exhibit 30, *Technical Overview of Volatile Organic Compounds*, U.S. Envtl. Prot. Agency, https://www.epa.gov/indoor-air-quality-iaq/technical-overview-volatile-organic-compounds (last visited Apr. 15, 2026).
[51] *See* Exhibit 31, D.T. Allen, *Emissions from oil and gas operations in the United States and their air quality implications*, 66 J. Air and Waste Mgmt., 549-575 (2016), https://www.tandfonline.com/doi/pdf/10.1080/10962247.2016.1171263 (describing emissions throughout the fossil fuel supply chain).

fracturing activities, and gas and oil transport infrastructure all release VOC and NOx, which in turn react with sunlight to create ground-level ozone.[52]

In the Permian Basin, oil and gas extraction has pushed VOC and NOx levels to dangerous highs. Based on EPA's most recent National Emissions Inventory data, oil and gas exploration and production activities in New Mexico's Permian Basin Counties were responsible for 12,793 tons of NOx and 82,442 tons of VOCs in 2017, as well as 38,633 tons of NOx and 174,054 tons VOCS in 2020.[53] Thus, even with the pandemic-related decline in oil and gas production in 2020, the EPA's emissions inventory demonstrates that oil and gas emissions skyrocketed in the three-year period between 2017 and 2020. As of 2020, oil and gas emissions also remained the single largest source of NOx and VOCs in the region, comprising 93% of all anthropogenic ozone precursor emissions. More specifically, oil and gas production in New Mexico's Permian Basin was responsible for over eight times as much anthropogenic NOx pollution as all mobile sources (e.g., cars, trucks, trains, planes, etc.) and released more than 17 times the VOCs of all other anthropogenic sources combined.

To further put this into perspective, VOC emissions from oil and gas production in New Mexico's Permian Basin were nearly three times the total VOCs released by all other anthropogenic sources (excluding oil and gas production) in New Mexico state-wide in 2020, and nearly 20 times the total amount of VOCs released by all anthropogenic sources of air pollution in the city of Denver, Colorado, an urban area with a population of over 700,000, a

[52] Exhibit 32, *See Ground Level Ozone Basics*, U.S. Envt'l Prot. Agency (Feb. 18, 2026), https://www.epa.gov/ground-level-ozone-pollution/ground-level-ozone-basics.
[53] Data queried from *2017 National Emissions Inventory Data*, U.S. Envt'l Prot. Agency, https://www.epa.gov/air-emissions-inventories/2017-national-emissions-inventory-nei-data (last visited Apr. 15, 2026) and *2020 National Emissions Inventory Data*, U.S. Envt'l Prot. Agency, https://www.epa.gov/air-emissions-inventories/2020-national-emissions-inventory-nei-data (last visited Apr. 15, 2026). Calculations assume biogenic emissions and wildfire emissions are not anthropogenic.

major international airport, extensive industrial activity, and countless cars and trucks.[54] The table below compares NOx and VOCs from oil and gas production with other source categories in Chaves, Eddy, Lea, and Roosevelt Counties.

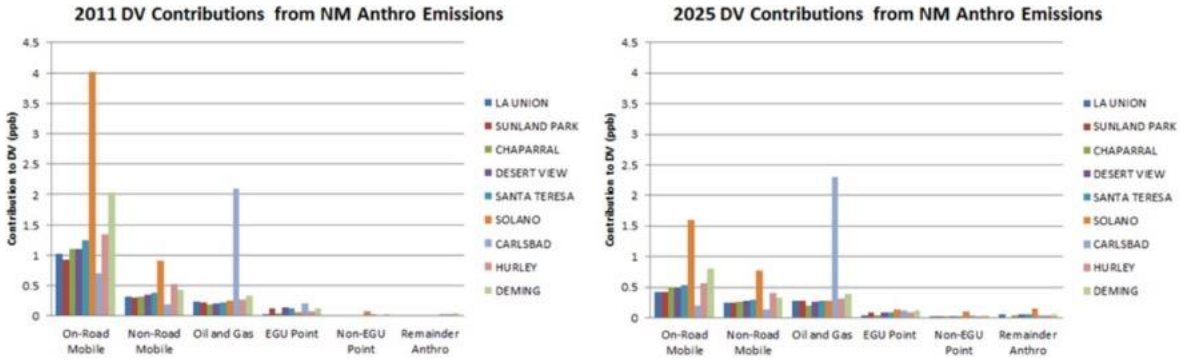
Emissions by Source Category in Permian Basin Counties for 2017 and 2020[55]

Source	Total NOx (tons/year) 2017	Total VOCs (tons/year) 2017	Total NOx (tons/year) 2020	Total VOCs (tons/year) 2020
Oil and gas production	**12,793**	**82,443**	**38,634**	**174,054**
Fuel combustion	9,463	1,125	656	748
Mobile source	5,745	2,473	4,574	1,437
Non-oil and gas industrial processes	260	812	--	145
Agriculture	--	639	--	1,431
Waste disposal	19	48	24	43
Solvent use	--	2,059	--	1,765
Other	58	2,219	25	4,519
Biogenics and Wildfire	4,875	80,419	2,221	29,424
Total	33,123	172,237	46,134	213,566

Modeling studies have further confirmed that oil and gas production activities contribute to dangerously high ozone levels at monitors in southeast New Mexico. The *Southern New Mexico Ozone Study Technical Support Document*, prepared in 2016, reported that "Oil and gas sources make the largest contribution at the Carlsbad monitor, which is the monitor located closest to the Permian Basin."[56] The report further found that "the impact of oil and gas sources increases in 2025 due to projected growth in Permian Basin emissions."[57]

[54] According to EPA's 2020 National Emissions Inventory Data, a total of 61,437 tons of VOCs were released from anthropogenic sources (excluding oil and gas production) in New Mexico state-wide and a total of 8,817 tons of VOCs were released from anthropogenic sources in Dever.
[55] *See* note 53, *supra*. The "other" category includes agricultural field burning, prescribed fires, miscellaneous non-industrial, bulk gasoline terminals, commercial cooking, gas stations, and dust.
[56] Exhibit 33, S. Kemball-Cook, J. Johnson, A. Wentland, Z. Liu, R. Morris, and Z. Adelman, *Southern New Mexico Ozone Study Technical Support Document* 70 (Oct. 19, 2016).
[57] *Id*. at 81.

The graphs below, which are excerpted from that report, illustrate the contribution from oil and gas at the Carlsbad monitor. Assessing a 2011 base-year design value, oil and gas already contributed 2 parts per billion to design value readings. By comparison, on-road mobile sources, or cars and trucks, contributed just over 0.5 parts per billion.



Source-specific contribution to ozone concentrations at southern New Mexico monitors, including Carlsbad

A 2018 article published in *Environmental Science and Technology* similarly confirmed the significant impact of oil and gas emissions on Permian Basin ozone concentrations.[58] The study found that oil and gas emissions contributed more than 6 parts per billion to summer season daily average 8-hour ozone concentrations in the area.[59]

Since these studies were conducted, oil and gas production in the region has more than doubled, dramatically increasing the industry's already significant contribution to Permian ozone pollution. Recently peer-reviewed and published studies have concluded that "unusually frequent ozone NAAQS exceedances…appear to be clearly linked to oil and gas industry emissions of hydrocarbons and NOx[,]" with these hydrocarbons contributing more than 90% to the region's

[58] *See* Exhibit 34, N. Fann et al. *Assessing Human Health $PM_{2.5}$ and Ozone Impacts from U.S. Oil and Natural Gas Sector Emissions in 2025*, 52 Envt'l Sci. & Tech, 8095-8103 (2018), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6718951/.
[59] *Id.* at Figure 1.

measured ozone formation potential.[60] These findings demonstrate that existing state permitting and regulatory controls have failed to prevent sustained ozone-forming emissions from oil and gas production in the Permian region.

B. *New Mexico's permitting and enforcement practices further exacerbate Permian Basin ozone pollution*

New Mexico implements the Clean Air Act's requirements through the New Mexico Air Quality Control Act, NMSA 1978, §§ 74-2-1 to -17 (1967, as amended through 2021).[61]

Under the Air Quality Control Act, NMED "is the state air pollution control agency for all purposes under federal legislation relating to air pollution" and must "take all action necessary to secure for the state and its political subdivisions the benefits of federal legislation." NMSA 1978 § 74-2-5.2. NMED must uphold the Clean Air Act through enforcement of New Mexico's Air Quality Control Act and related regulations to maintain air quality in compliance with the NAAQS. NMSA 1978 § 74-2-5.1.

NMED is also responsible for implementing New Mexico's air emissions permitting regime and is given broad authority to deny operating or construction permits if they "will not meet applicable standards, rules or requirements of the Air Quality Control Act" or "will cause or contribute to air contaminant levels in excess of a national or state standard." NMSA 1978 § 74-2-7. New Mexico's SIP further requires NMED to deny any construction permit if "[t]he construction, modification, or permit revision will cause or contribute to air contaminant levels in excess of any National Ambient Air Quality Standard or New Mexico ambient air quality

[60] Exhibit 35, M. Franklin et al., *Assessing Source Contributions to Air Quality and Noise in Unconventional Oil Shale Plays*, Health Effects Institute 46, 48 (Dec. 2025); Exhibit 36, M. Franklin et al., *Source Contributions to Air Pollution in the Permian Basin: Evaluating Emissions from Unconventional Oil and Gas Activities*, ACS ES&T Air, M-N (accepted Feb. 2026). *See also* Exhibit 37, G. Schade, *Air Quality Assessment in the NM Permian Basin: Oil & Gas Production Impacts*, Presentation to WNR Interim Committee 12 (Oct. 29, 2025).

[61] Exhibit 38, *Current N.M. State-Wide SIP Approved Regulations*, U.S. Envt'l Prot. Agency (Mar. 10, 2026), https://www.epa.gov/air-quality-implementation-plans/current-new-mexico-state-wide-sip-approved-regulations.

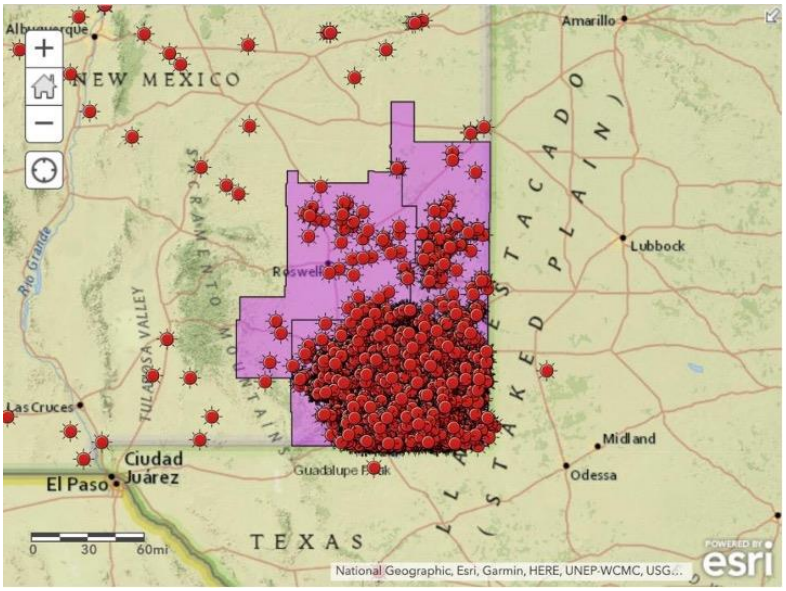
standard unless the ambient air impact is offset" or "[a]ny provision of the Air Quality Control Act will be violated." 20.2.72.208 NMAC.

As ozone pollution data indicates, these rules—as currently written and enforced—have not functioned to protect air quality. NMED has failed to fulfill its permitting and enforcement duties under the Air Quality Control Act and instead has authorized ever-expanding oil and gas extraction to pollute New Mexico's air, contributing to ozone nonattainment in New Mexico's Permian Basin Counties.

i. *NMED rapidly permits new and modified sources of ozone precursor pollutants*

Soaring ozone pollution levels are fueled by NMED's rapid permitting of new and modified oil and gas facilities in the Permian Basin, in contravention of NMED's duties under the Air Quality Control Act and New Mexico's SIP. Statewide, construction permits for the oil and gas industry have increased more than 2,000% in the past 10 years. The majority of this growth has taken place in Eddy and Lea Counties in New Mexico's Permian, even in the face of rising ozone pollution, exceedances, and violations.[62]

[62] Data queried from *AQB NSR Issued Data*, N.M. Env't Dept., https://coda.io/d/AQB-NSR-Issued-Report_dor5zr_0oRP/AQB-NSR-Issued-Data_suKp1#_lu5rQ (last visited Apr. 15, 2026).



Oil and gas facilities permitted by NMED in Permian Basin Counties[63]

In 2019, Cember Hardison, Prevention of Significant Deterioration Permit Section Manager - Major Source Section at NMED, specifically noted in an email to the New Mexico Air Quality Bureau (AQB) Permitting Programs Manager:

> we are processing and approving a large number of air quality permit applications in two Counties with monitoring data that is right at or above the ozone ambient air quality standard and we are not considering the ambient impact to ozone.[64]

She later continued:

> we may not have a specific provision in the GCP permits that allows us to deny permits or require that the AQB complete a more thorough review of the ambient impact for areas that are monitored nonattainment but not yet designated non attainment. However, I believe that we do have the authority and the obligation under the Air Quality Control Act.[65]

[63] Note: this figure was taken from WildEarth Guardian's 2021 Nonattainment Petition. Since 2021, the Permian Basin counties have only become more saturated with only and gas facilities.
[64] Exhibit 39, Email, Cember Hardison, PSD Permit Section Manager - Major Source Section, Air Quality Bureau, N.M. Env't Dept. to Ted Schooley, Permitting Programs Manager, Air Quality Bureau, N.M. Env't Dept. (Sept. 24, 2019, 1:12 MT).
[65] *Id*.

Hardison also raised the alarm about NMED's failure to meet its legal obligations to Elizabeth Kuehn, New Mexico Air Quality Bureau Chief, on October 9, 2019, writing:

> We are in nonattainment for ozone at the Carlsbad monitor….Although I was tasked with nonattainment permitting, but have been cut out of the communication loop on the topic. I also read the briefing paper on the subject and it excludes quite a bit of important information and the recommendation has no regulatory basis. With all of this, my sense is that you are not receiving complete information on the topic, so I am forwarding this directly to you. I know that does not follow the chains of command, but this is very important and is becoming obvious not only to me but to other staff here at AQB.[66]

Kuehn responded:

> Please know that we are actively working on briefing the Secretary and determining a path forward for how to process applications in this area. As you know, this is not a trivial issue….There is always a lag time for agencies to conduct the required technical analysis to determine the non-attainment boundary when a monitor is observing exceedances. We are now in this lag time, and managers should explain this to staff if there are questions.[67]

In the six years since following this email correspondence, NMED has not altered or slowed its permitting process, and air quality across the Permian region has continued to deteriorate. From 2021 to July 2025, the most recent period during which quarterly design values in both Eddy and Lea Counties consistently violated the ozone NAAQS, NMED issued nearly 1,400 construction permits for oil and gas. During the same period, NMED rejected only one construction permit for oil and gas.[68]

In a report prepared for the Center for Biological Diversity, Ph.D and engineer Ranajit Sahu confirmed that, based on existing information and analysis, the NMED's permitting of new

[66] Exhibit 40, Email, Cember Hardison, PSD Permit Section Manager - Major Source Section, Air Quality Bureau, N.M. Env't Dept. to Elizabeth Kuehn, Bureay Chief, Air Quality Bureau, N.M. Env't Dept. (Oct. 9, 2019, 3:42 MT).
[67] Exhibit 40, Email, Elizabeth Kuehn, Bureay Chief, Air Quality Bureau, N.M. Env't Dept. to Cember Hardison, PSD Permit Section Manager - Major Source Section, Air Quality Bureau, N.M. Env't Dept. (Oct. 11, 2019, 10:25 MT).
[68] *See* note 62, *supra.*

and modified oil and gas facilities in southeast New Mexico contributes to ozone NAAQS violations.[69] Mr. Sahu found:

> [I]n the absence of modeling or analytical data demonstrating otherwise, it is my professional judgment that it is reasonable to presume that any additional emissions of VOCs or NOx in Eddy and Lea counties, such as from the particular facilities at issue in this matter, will contribute to violations of the ozone NAAQS in the area.[70]

Despite confirming the link between permitting new and modified sources of air pollution and the region's ozone pollution—and the New Mexico Air Quality Control Act and New Mexico SIP's prohibition on approving permits that would "cause or contribute" to violations of the NAAQS (*see* NMSA 1978 § 74-2-7; 20.2.72.208 NMAC)—NMED continues to rapidly permit the release of additional ozone precursor emissions. The EPA now has a duty to step in and declare a nonattainment area to modify NMED's permitting practices and prevent further deterioration of Permian air quality.

ii. *NMED has weakened oil and gas permitting requirements*

NMED's use of a General Construction Permit for oil and gas sources weakens protections against harmful ozone precursor emissions.[71] The approval process for an Oil and Gas General Construction Permit is far less stringent than case-by-case minor new source review for construction permits and was further weakened by NMED in 2018. The Permit authorizes new oil and gas sources to emit up to 95 tons per year of volatile organic compounds and 95 tons per year of nitrogen oxides.[72] The protectiveness of these emissions limits is premised on

[69] Exhibit 41, by R. Sahu, *Expert Report in support of Petitioner in EIB No. 20-33(A) and EIB No. 20-21(A)* 2, https://www.env.nm.gov/environmental-improvement/wp-content/uploads/sites/8/2020/05/2020- 08-03-OPF-EIB-20-21A-and-20-33A-WildEarth-Guardians-Notice-to-Present-Testimony-small.pdf.
[70] *Id.* at 22.
[71] *See* 20.2.72.220 NMAC.
[72] Exhibit 42, *Air Quality Bureau General Construction Permit for Oil and Gas Facilities ("GCP-Oil & Gas")* 7, https://www.env.nm.gov/wp-content/uploads/sites/2/2018/06/GCP-Oil-Gas-Final-002.pdf.

ambient ozone levels below 70 parts per billion, which, as evidenced by data above, have not been reported out of the Permian Basin in multiple years.[73]

General construction permits comprise the vast majority of permits issued by NMED for oil and gas emissions—all of the nearly 1,400 construction permits approved by the Department in Eddy and Lea Counties since 2021 were general construction permits.[74] NMED's practice of "rubber stamping" new oil and gas emissions through the General Construction Permit contributes to violations of the ozone NAAQS. Here again, the EPA must declare a nonattainment area to compel NMED to increase the protectiveness of its permitting practices.

iii. *NMED fails to account for massive amounts of ozone precursor emissions*

Under NMED's current permitting thresholds, tens of thousands of extraction sites—including approximately 70,000 oil and gas wells statewide[75]—operate under "Notice of Intent" or "No Permit Required" authorizations. These authorizations require little-to-no regulatory scrutiny and do not provide an opportunity for public notice or appeal.[76] While Notice of Intent sources must comply with limited reporting requirements, No Permit Required sources are not under any reporting obligation.[77] NMED has authority to request emissions records, but does not regularly make records request for No Permit Required sources, leaving these sources' illegal emissions unknown.

[73] Exhibit 43, GCP-Oil and Gas Modeling Report 3 (2018) (modeling the air pollution contributions of sources authorized under the new permit); Exhibit 44, N.M. Env't Dept. Air Quality Bureau's Proposed Findings of Fact and Conclusions of Law, No. AQB 17-26(P), at 6 (2018).
[74] *See* note 62, *supra.*
[75] Exhibit 45, J. Redfern, *New Mexico's Billion-Dollar Oilfield Orphans*, N.M. PBS (Sept. 16, 2025), https://www.newmexicopbs.org/productions/newmexicoinfocus/new-mexicos-billion-dollar-oilfield-orphans/.
[76] *See* Exhibit 46, *Permitting*, N.M. Env't Dept., https://www.env.nm.gov/air-quality/permitting-section-home-page/ (last visited Apr. 15, 2025); 20.2.73 NMAC.
[77] *See Permitting*, *supra*.

Additionally, because the preproduction emissions for many oil and gas wells can exceed the limit that triggers the requirement for a construction permit under New Mexican law,[78] the prevalence of No Permit Required wells suggests that NMED fails to include preproduction emissions in determining the type of authorization that potential wells require.[79] As a result, thousands of sources of ozone precursor emissions have obtained less stringent pollution authorizations than legally required, contributing to unhealthy levels of ozone air pollution in the Permian.[80]

While these regulatory gaps involve unpermitted sources and thus would not be directly impacted by a nonattainment designation, the additional oversight and pressure to achieve attainment provided by such a designation may incentivize NMED to fix these harmful errors.[81]

iv. *NMED has a poor enforcement record*

NMED does not uniformly enforce air quality laws and regulations but rather picks "winners and losers" when it comes to enforcement.[82] NMED's own self-assessments state that the Department's Air Quality Bureau "only assures compliance with a small percent of the sources it regulates in a given quarter."[83] In a September 2025 interview, Michelle Miano, NMED's Environmental Protection Division Director told reporters that even when the

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[78] *See* data available at *Incident Search*, OCD Permitting, https://wwwapps.emnrd.nm.gov/OCD/OCDPermitting/Data/Incidents/Incidents.aspx (last visited Apr. 16, 2026).
[79] *See* note 62, *supra*.
[80] In Exhibit 47, *Center for Biological Diversity v. EPA*, the Tenth Circuit held that Colorado's exemption for "emissions resulting from temporary activities"—such as preproduction activities—from its emission-source permitting scheme violates the Clean Air Act. 82 F.4th 959, 963, 967-68 (10th Cir. 2023). As all state permitting schemes must comply with Clean Air Act requirements, this decision clarifies that states must count oil and gas wells' preproduction emissions when determining the wells' potential emission rate, as well as when determining what type of permit a well requires.
[81] *See* 42 U.S.C. § 7509.
[82] *See* Exhibit 48, N. Jones, *Without More Funds, NM Environment Department Must Pick 'Winners and Losers,' Says Top Official*, KUNM (Feb. 6, 2023) https://www.kunm.org/local-news/2023-02-06/without-more-funds-nm-environment-department-must-pick-winners-and-losers-says-top-official.
[83] Exhibit 49, *NMED FY21 Performance Measure: Quarter 4 Report* 19*,* N.M. Env't Dept.

Department does bring enforcement actions, their approach "has not been enough to make the industry change its behavior."[84]

NMED reports that it inspected just 20% of emitting sources in FY2022, 33.3% in FY2023 and 32.1% in FY2024.[85] These percentages are calculated as a fraction of the small number of emitting sources that are included in NMED's annual Compliance Monitoring Strategy (CMS) Plans. In FY2022, for example, approximately 850 emitting sources were included in the CMS Plan.[86] If calculated as a more representative fraction of the tens of thousands of oil and gas emissions sources authorized in New Mexico, NMED would have inspected just a fraction of one percent of all sources. Further, during FY2022, FY2023 and FY2024, the Department initiated just 3, 14 and 34 air quality enforcement actions, respectively.[87] Given that 30%, 65.2%, and 70% of New Mexico's emissions sources were estimated to be in regulatory noncompliance in each of those years, respectively, NMED similarly initiated enforcement actions against just a fraction of one percent of all violators.

NMED's poor enforcement record has given rise to systemic regulatory noncompliance among oil and gas operators. The oil and gas industry regularly discharges illegal emissions

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[84] Exhibit 50, T. Daldrup, M. Cera, *NEW: Permian Resources Exposed Thousands to Cancer-Causing Chemicals in New Mexico, According to New Tracking Tool*, Hunterbrook (Sept. 24, 2025), https://newsletter.hntrbrk.com/p/new-permian-resources-exposed-thousands?publication_id=2442504&post_id=174457603&isFreemail=true&r=3166ah&triedRedirect=true.

[85] Exhibit 51, *Performance Assessment: Fiscal Year 2022, 4th Quarter, April 1-June 20, 2022*, N.M. Env't Dept. 10 (Sept. 1, 2022), https://www.env.nm.gov/wp-content/uploads/2022/09/2022-09-01-OSI-FY22-Q4-NMED-Performance-Assessment-Final.pdf; Exhibit 52, *Performance Assessment: Fiscal Year 2023, 4th Quarter, April 1-June 30, 2023*, N.M. Env't Dept. 9 (Aug. 23, 2023), https://www.env.nm.gov/wp-content/uploads/2023/08/2023-08-23-OSI-FY23-Q-4-NMED-Performance-Assessment-Final.pdf; Exhibit 53, *Performance Assessment: Fiscal Year 2024, 4th Quarter, April 1-June 30, 2024*, N.M. Env't Dept. 9 (Oct. 10, 2024), https://www.env.nm.gov/wp-content/uploads/2024/10/2024-06-18-OSI-FY24-Q4-NMED-Performance-Assessment_final.pdf.

[86] Exhibit 54, *NMED FY22 Performance Measure: Data Quality Record on Percent of Air Emitting Sources Inspected* 3, N.M. Env't Dept.

[87] Data queried from *Enforcement Watch*, N.M. Env't Dept., https://www.env.nm.gov/enforcement-watch (last visited Apr. 15, 2025).

throughout the Permian region. NMED reports operators illegally emitted 3,307 tons of volatile organic compounds, as well as 418 tons of nitrogen oxides, between FY2022 and FY2024.[88] The Department acknowledges that their numbers may not reflect the true extent of emissions, as they assume accurate self-reporting from operators, may reflect improper calculation methods and/or poor record keeping, and do not account for all actual emissions at a facility such as: fugitive emissions, borrowed or leased equipment emissions, exempt equipment, or vehicular emissions at facilities.[89] Further, as No Permit Required sources are not under any reporting obligation, these numbers are based on a very small subset of polluting sources.

Overall, NMED reports increasing regulatory noncompliance across the fossil fuel industry, rising from 30% noncompliance among operators in FY2022, to 65.2% in FY2023, to an all-time high of 70% in FY2024.[90] Due to this systemic noncompliance, existing regulatory efforts are insufficient to bring the Permian region back into attainment for ozone. Consequently, the EPA must act on its duty to declare a nonattainment area and bolster air pollution regulation and enforcement mechanisms in New Mexico's Permian Basin Counties.

C. Climate change also intensifies ozone pollution in the Permian area

Climate change's increasing contribution to ground-level ozone pollution in the Permian region further underscores the need for a nonattainment designation. Ozone forms when VOCs and NOx react in the presence of sunlight and heat.[91] Ozone concentrations typically spike during the summer months when long periods of sunlight and summer heat interact with VOC and NOx. However, climate disruption will continue to raise the earth's surface mean

[88] *See Performance Assessment: Fiscal Year 2022*, *supra* at note 85 at 9; *Performance Assessment: Fiscal Year 2023*, *supra* at note 85 at 8; *Performance Assessment: Fiscal Year 2024*, *supra* at note 85 at 8.
[89] Exhibit 55, *NMED FY22 Performance Measure: Data Quality Record on Amount of Volatile Organic Compounds Emitted Statewide, In Tons* 3, N.M. Env't Dep't.
[90] *See* note 85, *supra*.
[91] *See Ground Level Ozone Basics*, *supra* at note 52.

temperatures, likely lengthening the period when ground-level ozone is readily formed. EPA analysis acknowledges this frightening reality.[92]

A report by the Union of Concerned Scientists surveying the literature on climate change and ground-level ozone concluded that the "ozone penalty factor"—the amount ozone levels are projected to increase for every 1-degree Fahrenheit (ºF) increase in temperature—was 1.2 ppb (0.0012 ppm).[93] New Mexico is one of the fastest-heating states in the United States. Average temperatures in the state have increased 3.6°F since 1970,[94] and are expected to rise by another 5 to 7 °F over the next 50 years.[95] Thus, based solely upon the "ozone penalty factor," global heating alone may have already increased ozone levels over 4.3 ppb, and is likely to result in an additional increase of 6 to 8.4 ppb over the next 50 years. This increase is separate and apart from the significant rise in ozone pollution levels driven by increasing ozone precursor emissions from fossil fuel production. One 2011 study predicted heightened levels of ground-level ozone created by climate change could cause a 7.3% increase in emergency room visits related to asthma by children aged 0–17.[96] As this study was conducted prior the Permian region's fossil fuel production explosion, today's realties are likely much worse.

Critically, climate change does not just exacerbate fossil fuel-driven ozone pollution—the fossil fuel emissions that generate ozone pollution also contribute to climate change. That is, the emission of NOx and VOCs often coincide with the release of methane during the oil and gas

[92] Exhibit 56, *Air Quality and Climate Change Research*, U.S. Envt'l Prot. Agency, https://www.epa.gov/air-research/air-quality-and-climate-change-research (last visited Apr. 28, 2026).
[93] Exhibit 57, *Rising Temperatures, Worsening Ozone Pollution*, Union of Concerned Scientists (Aug. 2, 2011), https://www.ucsusa.org/sites/default/files/2019-09/climate-change-and-ozone-pollution.pdf.
[94] Exhibit 58, *Earth Day: Fastest Warming Cities and States*, Climate Central, https://www.climatecentral.org/climate-matters/earth-day-fastest-warming-us-cities-and-states (last visited Apr. 16, 2026).
[95] Exhibit 59, *Climate Change in New Mexico*, 350 New Mexico, https://350newmexico.org/confronting-climate-change-in-new-mexico/ (last visited Apr. 16, 2026).
[96] Exhibit 60, Perry E. Sheffield et al., *Modeling of Regional Climate Change Effects on Ground-Level Ozone and Childhood Asthma*, 41 Am. J. Prev. Med. 252 (2011).

extraction process.[97] Methane is a major driver of the climate crisis. It is a climate super-pollutant, over 80 times more powerful than carbon dioxide at heating the planet over a 20-year time frame.[98] Across New Mexico, venting and flaring alone released an average of 25 billion cubic feet of methane each year between 2014 and 2024, totaling approximately 287 billion cubic feet during that period.[99]

Thus, fossil fuel emissions in New Mexico's Permian contribute to a vicious cycle – the emissions exacerbate both ozone pollution and climate change, as climate change, in turn, worsens ozone pollution. Absent a formal nonattainment designation, climate change will continue to worsen, and the region's ozone levels will continue to grow exponentially. This will likely prevent Chaves, Eddy, Lea, and Roosevelt Counties from ever achieving compliance with the ozone NAAQS.

V. A Nonattainment Designation Will Require New Mexico to Fulfill Its Legal Obligations and Ensure Air Quality Complies with the NAAQS

By requiring New Mexico to revise its SIP, and by providing key resources and an enforcement backstop, a nonattainment designation will mitigate the root causes of the Permian Basin's ozone pollution crisis, enabling the region to work toward ozone attainment.

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[97] Exhibit 61, *Methane and Other Air Pollution Issues in Natural Gas Systems*, U.S. Congress (Sept. 17, 2020), https://www.congress.gov/crs-product/R42986.

[98] Exhibit 62, *Methane Levels Reach an All-Time High*, Sci. Am. (Apr. 12, 2020), https://www.scientificamerican.com/article/methane-levels-reach-an-all-time-high/.

[99] Data queried from *OCD Statistics*, https://www.emnrd.nm.gov/ocd/ocd-data/statistics/. Making matters worse, this methane emissions total is likely a severe underestimate. One study using satellite observations found that overall methane emissions from oil and gas in the Permian Basin of New Mexico and Texas were two times higher than reported by traditional bottom-up inventory Exhibit 63, Z. Zhang, R. Gautam, S. Pandey, M. Omara, J.D Maasakkers, P. Sadaverte, D. Lyon, H. Nesser, M.P. Sulprizio, D.J. Varon, R. Zhang, S. Houweling, D. Zavala-Araiza, R.A. Alvarez, A. Lorente, S.P. Hamburg, I. Aben, D.J. Jacob, *Quantifying methane emissions from the largest oil producing basin in the United States from space*, Sci. Adv. 6 (2020), https://advances.sciencemag.org/content/6/17/eaaz5120. Another study specifically of oil and gas well sites in the Permian Basin of New Mexico found that methane emissions were 5.5-9.0 times greater than EPA National Emissions Inventory estimates for the region. Exhibit 64, A.M. Robertson, R. Edie, R.A. Field, D. Lyon, R. McVay, M. Omara, D. Zavala-Araiza, and S.M. Murphy, *New Mexico Permian Basin measured well pad methane emissions are a factor of 5-9 times higher than U.S. EPA estimates*, 54 Environ. Sci. Technol.13926-13934 (2020).

A. *A nonattainment designation will require New Mexico to revise its SIP to adequately control Permian ozone pollution*[100]

Under the Clean Air Act, a SIP must provide for the implementation, maintenance, and enforcement of the NAAQS. *See* 42 U.S.C. § 7410(a)(1) and 40 C.F.R. § 51.112(a). The SIP must further set forth "legally enforceable procedures" that enable a state to determine whether the permitting of a new source or modification will interfere with attainment or maintenance of a NAAQS and to prevent the construction or modification of a stationary source that will interfere with attainment or maintenance of the NAAQS. *See* 40 C.F.R. § 51.60(a)(2) and (b)(2). For attainment areas, the SIP need only set forth measures "to prevent significant deterioration of air quality." 42 U.S.C. § 7471. But for nonattainment areas, the SIP must impose "all reasonably available" measures to achieve attainment "as expeditiously as practicable." *Id.* § 7502(c)(1). Further, the Clean Air Act requires the EPA to call for a state to revise its SIP whenever the agency finds the SIP is substantially inadequate to attain and maintain ozone NAAQS. *See* 42 U.S.C. § 7410(k)(5).

Given the emissions data presented above, the EPA has a legal duty to require that New Mexico revise its SIP. All three ozone monitors in New Mexico's Permian Basin have current and prior recorded design values in excess of the ozone NAAQS. The fact that the region's monitors remain in consistent violation of the 2015 standards is undeniable proof that New Mexico's SIP is failing to attain and maintain the NAAQS, in violation of Clean Air Act requirements. Revision is also necessary due to NMED's rampant permitting of new or modified sources of ozone precursor emissions under a weak General Construction Permit for oil and gas.

[100] New Mexico recently proposed SIP amendments related to regional haze control, including adopting a new Regional Haze Requirements Rule (20.2.68 NMAC). *Regional Haze Planning*, N.M. Env't Dept., https://www.env.nm.gov/air-quality/reg-haze/ (last visited Feb. 25, 2026). While these proposed changes represent a step in the right direction, they remain insufficient to address the pervasive regulatory, enforcement, and compliance deficits contributing to ozone nonattainment in the Permian region.

These permitting practices demonstrates that New Mexico's current SIP is failing to prevent the authorization of stationary sources that cause or contribute to violations of the ozone NAAQS, rendering it legally inadequate.

Requiring New Mexico to revise its SIP to come into compliance with the Clean Air Act will ensure that the state puts forth more stringent regulatory procedures—including permitting procedures—to improve air quality. *See* 42 U.S.C. §§ 7410; 7402-04. The Clean Air Act provides an 18-month deadline for a state to submit a revised SIP. 42 U.S.C. § 7410(k)(5). However, due to the serious public health, welfare, and environmental consequences of ongoing ozone violations in the Permian Basin, we request the EPA call for New Mexico to submit a revision within three months of Agency notification.

B. *A nonattainment designation will provide regulatory resources and an enforcement backstop*

Following a nonattainment designation, New Mexico will benefit from additional regulatory resources and oversight. As outlined in Section IV(b) above, NMED's permitting and enforcement practices have contributed to unhealthy and illegal air quality. The rules currently applied to operators—including New Mexico's SIP, the state's 2021 Ozone Precursor Rule,[101] and EPA's 2023 Methane Rule—have not resulted in reduced ozone precursor emissions from oil and gas sources; in fact, as illustrated by the EPA's data above, air quality in the region has worsened since the latter two rules went into effect.[102] 42 U.S.C. § 7505 (a) mandates that following a nonattainment designation, the EPA "shall make grants to any organization of local elected officials with transportation or air quality maintenance planning responsibilities...for

[101] Notably, the Ozone Precursor Rule in not part of New Mexico's SIP, and thus is not federally enforceable, further underlining the current SIP's inadequacy.
[102] *See* tables *Carlsbad, NM 8-Hour Ozone Readings (in ppm), 2015-2024*; *Carlsbad Caverns National Park 8-Hour Ozone Readings (in ppm), 2015-2024*; and *Hobbs, NM 8-Hour Ozone Readings (in ppm), 2015-2024, supra* at p. 15.

payment of the reasonable costs of developing a plan revision under this part." Additionally, 42 U.S.C. § 7509 (b) and (d) outline the sanctions available to the EPA if New Mexico fails to comply with nonattainment procedures or fails to achieve attainment, respectively. These tools, triggered by a nonattainment designation, will hold NMED accountable to its legal duty to control ozone pollution.

C. EPA's rationale for denying prior petitions is no longer valid

After receiving WildEarth Guadian's 2021 nonattainment petition, the EPA issued a response in March 2024 declining to act. While the EPA gave little reasoning for this decision, the Agency did reference the recent passage of its 2023 Methane Rule to "sharply reduce emissions of methane and other harmful air pollution from oil and natural gas operations", which would have the "co-benefit" of reducing "smog-forming VOC emissions."[103] The Agency also noted that it would use "information gathered during [Permian Basin] flyovers to identify and take enforcement actions to address unauthorized emissions."[104] Neither of these rationales can be justified today.

Since March 2024, ozone NAAQS violations in New Mexico's Permian Basin Counties have only increased in severity. Furthermore, in July 2025, significant components of the EPA's Methane Rule were suspended: among other things, compliance with the Methane Super Emitter Program was delayed until 2027; state compliance with the 2024 Emission Guidelines was delayed until 2027; and compliance deadlines for New Source Performance Standards related to control devices, equipment leaks, storage vessels, process controllers, and vent systems were

[103] Exhibit 65, Letter from EPA to WildEarth Guardians (Mar. 4, 2024).
[104] *Id.*

delayed until 2027.[105] Thus the EPA's Methane Rule has not provided any reductions in emissions and its ability to do so in the future remains unclear.

EPA's 2024 position that enforcement actions would further reduce emissions is also invalid today. According to research performed by the Environmental Integrity Project (EIP), federal environmental enforcements have "suffered a dramatic collapse in the first year of the second Trump Administration."[106] EIP further states that the "enforcement decline is by design," whereby "policy directives that benefit fossil fuel companies over the health and wellbeing of the American people" and reductions of staff at the Department of Justice and EPA combine to "interfere with EPA's ability to respond effectively to environmental violations."[107] Specifically, in New Mexico, this decline has meant that since the start of 2026, EPA has finalized just two Clean Air Act inspections and *zero* Notices of Violation for oil and gas facilities in the Permian Basin.[108] In fact, the last Clean Air Act Notice of Violation issued by EPA for an oil and gas facility in the Permian Basin was in August 2025—and in the past *year*, EPA's inspection and enforcement work has led to a total of *zero* final administrative enforcement actions. That is, there have been no Consent Agreement and Final Orders, Administrative Orders on Consent, or Settlement Agreements for oil and gas facilities in the Permian Basin.[109] Based on this metric,

[105] Exhibit 66, *Methane Super Emitter Program*, U.S. Envt'l Prot. Agency (Oct. 2, 2025), https://www.epa.gov/compliance/methane-super-emitter-program.
[106] Exhibit 67, *Declining Environmental Enforcement in Trump's Second Term*, Environmental Integrity Project (Feb. 5, 2026), https://environmentalintegrity.org/wp-content/uploads/2026/02/EIP_Report_2025EnvironmentalEnforcement_2.5.26.pdf.
[107] *Id.*
[108] Data queried from *Enforcement and Compliance Assurance Documents for New Mexico*, U.S. Envt'l Prot. Agency, https://www.epa.gov/nm/enforcement-and-compliance-assurance-documents-new-mexico (last visited April 22, 2026).
[109] *Id.*

EPA can no longer claim as it did in 2024, that it is "tak[ing] enforcement actions to address unauthorized emissions."[110,111]

When making a status determination under the Clean Air Act, the EPA is required to engage in reasoned decision-making. *See Clean Wisconsin*, 964 F.3d at 1161. In the face of skyrocketing oil and gas production and pollution, NMED's continual failure to fulfill its permitting and enforcement duties, and the exacerbating effects of climate change, EPA no longer has any basis to claim New Mexico's Permian region as an attainment area.[112] Thus far, EPA's failure to declare a nonattainment area has heightened ozone-related damage in the region. *See Clean Wisconsin v. EPA*, 964 F.3d 1145, 1157 (D.C. Cir. 2020). EPA must act now and meet its duty to redesignate the Permian Basin Counties as nonattainment.

VI. Conclusion

The Permian Basin of southeast New Mexico is in violation of the 2015 ozone NAAQS. Accordingly, the region, including Chaves, Eddy, Lea, and Roosevelt Counties, must be redesignated from attainment to nonattainment. The EPA has an urgent duty to act to protect

[110] Letter from EPA to WildEarth Guardians, *supra* at note 103.

[111] Additional recent EPA actions will further degrade air quality. For example, in February 2026, the Agency rescinded its 2009 greenhouse gas endangerment finding and repealed all associated emission standards for light-duty, medium-duty, and heavy-duty vehicles. *Rescission of the Greenhouse Gas Endangerment Finding and Motor Vehicle Greenhouse Gas Emission Standards Under the Clean Air Act*, 91 Fed. Reg. 7686 (Feb. 18, 2026). Rescission of the endangerment finding will have far-reaching impacts on a number of polluting sectors beyond vehicle emissions—many of which carry the co-benefit of reducing ozone precursor emissions. Another recent rulemaking by EPA, finalized in April 2026, further loosens requirements on oil and gas operators by dramatically reducing monitoring and testing obligations, expanding permitted flaring exemptions, and allowing additional time for flaring. *Id.* EPA is thus actively reducing regulatory requirements on oil and gas and other ozone-emitting sectors, which will further exacerbate ozone pollution in New Mexico's Permian region.

[112] In addition to the factors discussed in this petition, the EPA considers meteorology, topography, and jurisdictional boundaries when deciding whether to promulgate a nonattainment designation. *See* Exhibit 68, *Clean Wisconsin*, 964 F.3d at 1155; Exhibit 69, *Bd. of Cnty. Commissioners of Weld Cnty. Co. v. EPA*, 72 F.4th 284 (D.C. Cir. 2023). Here, no meteorological or topographical condition has mitigated persistent and long-standing ozone NAAQS violations in the region. Additionally, air quality data suggests that the Permian Basin counties as a whole are out of compliance with the NAAQS, creating a straightforward jurisdictional divide.

human health and the environment from the harmful effects of years of extensively documented ozone NAAQS violations.

Given the ongoing increases in oil and gas extraction that exacerbate ozone pollution in the region, NMED's continuous violation of its duties under the Air Quality Control Act, and the further compounding effect of climate change on ozone pollution, redesignating the region to nonattainment is required by law to protect human health and the environment.

By mandating that New Mexico to revise its SIP, and by providing key resources and an enforcement backstop, a nonattainment designation will require New Mexico to work towards reducing the Permian Basin's ozone pollution crisis and returning the region to attainment for ozone.

We request the EPA review and respond to this petition expeditiously given the severity of the ozone pollution crisis, and the resulting harm to the region. Specifically, we request the EPA:

1. Provide an immediate acknowledgment that this petition has been received;

2. Notify the Governor of New Mexico, within one month of receipt of this petition, that available information indicates the designation of Chaves, Eddy, Lea, and Roosevelt Counties must be revised from attainment to nonattainment and request that the Governor respond within one month of notification;

3. Promulgate a redesignation no later than 240 days from notification, 42 U.S.C. § 7407(d)(3)(C); and

4. Notify the State of New Mexico, within three months of receipt of this petition, that its SIP is substantially inadequate and must be revised within three months of notification.

Again, please direct all correspondence regarding this petition to:

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Thank you for your prompt attention to this significant problem.

Submitted this 29 of April 2026.

/s/ Gail Evans
Gail Evans
New Mexico Climate Director
The Center for Biological Diversity

/s/ Sarah Baer
Sarah Baer
Legal Fellow
Center for Biological Diversity

/s/ Sharon Wilson
Sharon Wilson
Director
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/s/ *Adrastos Da Silva*
Adrastos Da Silva
Director
Youth United for Climate Crisis Action (YUCCA)

/s/ Hayley Jones
Hayley Jones
Organizer
Citizens Caring for the Future

/s/ Rev. Clara Sims
Rev. Clara Sims
Assistant Executive Director
New Mexico Interfaith Power and Light

/s/ Gabrielle Uballez
Gabrielle Uballez
Executive Director

New Mexico Voices for Children

/s/ *Rebecca Sobel*
Rebecca Sobel
Climate and Health Program Director
WildEarth Guardians