United States Senate
WASHINGTON, DC 20510-0309

March 13, 2024

Joseph Goffman
Assistant Administrator for the Office of Air and Radiation
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Assistant Administrator Goffman,

Thank you for your recent visit to the Phoenix area, to meet with our staffs and a diverse range of Arizona stakeholders to discuss the air quality challenges facing the Maricopa region and the State of Arizona. We appreciate your willingness to hear first-hand the challenges and opportunities our state is currently facing, and we write to ask that the Environmental Protection Administration (EPA) respond to the challenges discussed during the visit, while advancing our shared goals of supporting economic growth, improving air quality and protecting our environment.

Maricopa County Ozone Non-attainment

As you saw and heard during your visit, the Phoenix region is a growing hub for the industries of the future – including microchip manufacturing and electric vehicle production. These industries play an important role in our national efforts to support a transition to clean energy, reduce our reliance on overseas manufacturing, and enhance our national security, all while creating great paying jobs for Arizona families.

The Maricopa Nonattainment area, including Maricopa and Pinal counties, is currently classified as being in moderate non-attainment of the 2015 National Ambient Air Quality Standard (NAAQS) for ground-level ozone. For regions that are in non-attainment, there is an absolute cap placed on industrial source pollution, meaning certain increases in emissions from major industrial sources need to be offset from other sources. Many new industrial expansions in the Phoenix area will require offsets for ozone precursors, yet traditional methods of generating emission reduction credits (ERCs) have been exhausted in Maricopa County. Solutions are needed to identify additional opportunities to generate ERCs, to ensure we can both improve air quality while supporting continued growth.

Additionally, we recognize that EPA issued a finding of a failure to submit a plan to address moderate ozone nonattainment in October 2023. As was discussed during your visit, the Arizona Department of Environmental Quality and the Maricopa County Air Quality Department are working in close collaboration with EPA Region 9 to identify feasible remedies to reduce ozone concentrations in the region as quickly as possible, and all stakeholders are committed to avoiding the imposition of additional sanctions on the Maricopa region.

As you saw during your visit, Arizona's air quality regulators, elected officials, utilities, industry, and communities are committed to working together to improve air quality in the Phoenix region and reduce ozone concentrations. But doing so will require a close and collaborative partnership with EPA Headquarters and the Region 9 office to advance solutions that address our air quality challenges without impeding the growth that will serve as part of the long-term solutions to improve air quality and combat climate change.

Therefore, we ask that you work to take the following steps to address Ozone nonattainment issues in the Phoenix area:

- **Issue a Conditional Approval of Maricopa County's Rule 205:** On May 4, 2023, Maricopa County submitted an Emission Reduction Credit generation rule to EPA for approval, called Rule 205. If approved, the rule would authorize the generation of Mobile ERCs which could be obtained by retrofitting diesel or gasoline powered vehicles to electric vehicles or lower emitting vehicles. Establishing a process for enabling new ERCs to be generated will provide Arizona companies the opportunity to offset any new emissions created through industrial expansion, while reducing harmful emissions. We understand that EPA Region 9 has already approved similar ERC generation for specific companies in Arizona, and adopting this rule provides certainty for current and planned industrial growth in Arizona. **We ask that EPA complete its review of Rule 205 and issue a conditional approval within the coming weeks.**

- **Complete a review and provide a path forward for Maricopa County's Rule 204:** On December 19, 2019, Maricopa County submitted an ERC generation rule to EPA for approval, called Rule 204. Similar to Rule 205, this rule would generate new ERC offsets through nontraditional sources, such as electrification of truck stops, or upgrading on-site mobile equipment to reduce emissions. Despite this rule having been submitted to EPA more than four years ago – no final action has been taken by EPA to date. As with Rule 205, conditional approval of Rule 204 is a critical tool to enable the Phoenix region to navigate offsets required by the non-attainment designation. **We ask that EPA provide substantive feedback and provide Maricopa County with a path forward to achieving conditional approval on Rule 204 by the end of 2024. We also ask that you provide our offices with monthly updates on the progress Region 9 is making to complete its review of Rule 204.**

- **Work collaboratively with Arizona's leaders to provide usable, citable ozone science to complete planning activities:** The Arizona Department of Environmental Quality (ADEQ) and the Maricopa Association of Governments (MAG), which is the lead planning agency for the region, are working to submit credible and effective planning documents to advance ozone attainment. Yet, the current data and modeling used by both EPA and MAG show the science of ozone formation in the Phoenix area is full of uncertainty. Since 2017, emissions in the region have fallen, while ozone levels have increased. As policy makers face imminent deadlines imposed by the Clean Air Act, they must have access to defensible and accurate scientific data that confirms that new local measures will reduce ozone formation. **We ask that EPA work collaboratively with**

ADEQ and MAG to develop data and modeling specific to the Phoenix region that explains why ozone has been increasing despite decreases in manmade emissions. We ask that this work be completed within a timeframe that is both necessary and useful to allow these entities to meet relevant Clean Air Act deadlines. We also ask that you provide all available flexibilities in terms of submission timelines and technical assistance. If an implementation plan is submitted, we ask that you provide our offices with regular updates on the status of EPA's review of the plan.

- **Update EPA Guidance on 179B Demonstrations for nonattainment areas:** EPA's own modeling on ozone non-attainment shows that more than 80 percent of the ozone forming pollutants in the Phoenix area come from sources that cannot be controlled in the Phoenix area, including emissions from other states, other countries, and natural sources. With Arizona in close proximity to Mexico, which requires fewer air quality controls on industrial sources and may also be the source of "natural" emissions that cross the border, it's critical that Arizona communities not be penalized for emissions that come from these uncontrollable sources. Section 179B of the Clean Air Act provides a pathway to demonstrate that emissions emanating from outside the United States can cause nonattainment in certain regions. However, EPA's current 179B implementation guidance and policy apply restrictive requirements that are not explicitly contained in the Clean Air Act Section 179B. These restrictions mean that regions, like Maricopa County, may be unable to obtain relief provided by the 179B program, even when doing so could be a critical component of an overall strategy to come into attainment. **We ask that EPA modify its implementation guidance for the 179B program to remove requirements that are not an explicit part of the statute and allow any region negatively impacted by international emissions to demonstrate that it qualifies for treatment in accordance with Clean Air Act section 179B.**

- **Streamline the Exceptional Events submission process:** Exceptional events are unusual or naturally occurring events that can impact air quality but are not controllable by state or local air agencies. Exceptional events can include a number of naturally occurring phenomena that are increasingly common in Arizona and the rest of the western United States, such as wildfires, prescribed fires, and haboobs (high wind dust events). As these events become more numerous and common throughout the Intermountain West, scientific research and modeling demonstrates that wildfires impact ozone chemistry throughout the region, raising background ozone levels across the Intermountain West. There are often hundreds of wildfires burning simultaneously throughout the West, making it near impossible to isolate the specific impacts of a particular wildfires. EPA's Exceptional Events Rule is designed to provide a framework for states and air agencies to request an exclusion of air quality data influenced by exceptional events. However, as we heard from MAG, Maricopa County, and ADEQ, the process for submitting needed documentation for an exceptional event can be difficult and time consuming. Furthermore, delays in EPA approval of Exceptional Event Demonstrations create uncertainty for states and local air agencies, especially when regions are modeling and developing future implementation plans – as we are in the Phoenix region. We appreciate that EPA has taken some initial steps to release new tools to help with Exceptional Event Demonstrations for the newly promulgated NAAQS for

PM2.5. **We ask that EPA release additional tools and streamline data requirements and submission process for Exceptional Events Demonstrations for ground level ozone emissions, and advance work on air shed modeling to recognize that in the West, wildfire events are often not individual, isolated events.**

- **Work to improve modeling and science to identify options for emissions controls:** Ground-level ozone pollution is created through a complex chemical reaction between nitrogen oxides (NOx), volatile organic compounds (VOCs), and sunlight. Given that changes in any one of these factors can cause an increase or decrease in ozone emissions, it's critical that EPA, the State of Arizona, and Maricopa and Pinal counties are all working from the same air quality data and are using air quality models based on the latest science. As was discussed during your visit, the Phoenix region has seen reductions in emissions over the past decade yet expected reductions in ozone concentrations have not occurred. To ensure the Phoenix-region has an achievable path toward attainment, **we ask that EPA's technical staff work closely with MAG, Maricopa County and the Arizona Department of Environmental Quality to develop accurate modeling and identify effective local ozone reduction controls which will result in real and measurable reductions at air quality monitors in Arizona.**

Good Neighbor Rule:

In January, EPA proposed supplemental rulemaking under the "good neighbor provision" of the Clean Air Act. This proposed regulation would designate Arizona an upwind state and require Arizona utilities and industry to reduce ground-level ozone emissions which impact neighboring states.

The "good neighbor provision" of the Clean Air Act requires states to prevent in-state emissions activities from affecting the air quality of other, downwind states. Under the NAAQS issued by EPA in 2015, the state of Arizona submitted a state implementation plan to come into compliance with the new NAAQS in 2018. At the time, based on EPA's own modeling, Arizona was not shown to contribute to any ozone nonattainment for any other downwind state, and EPA proposed to approve Arizona's implementation plan in 2022.

We understand that in the intervening time, EPA conducted additional ozone modeling, which found that emissions from Arizona did contribute to ozone nonattainment in New Mexico, Colorado, Nevada, and Texas. As a result, on January 16, 2024, EPA issued a new notice of proposed rulemaking which proposed to partially disapprove Arizona's state implementation plan and impose a federal implementation plan on Arizona that requires utilities to enter into an emissions trading program to reduce pollution from ozone-forming pollutants.

Arizonans deserve clean, breathable air, and we support efforts by EPA to reduce ozone-forming pollutants. However, the change in modeling used by EPA midway through the review of Arizona's state implementation plan and the requirement that Arizona utilities participate in a new emissions trading program have created considerable uncertainty for Arizona stakeholders. Arizona utilities have raised concerns that the new emission limitations may reduce electricity generation, particularly during the hottest months of the year, when the strain on Arizona's grid is highest.

Given the complexities involved in this proposed rulemaking we ask that the comment period be extended to not less than 90 days, to allow sufficient time for Arizona stakeholders to comment on the proposed rule.

Grid Reliability and Section 111 Power Plant Rule:

Last May, EPA proposed new carbon pollution standards for coal and natural gas fired power plants under section 111 of the Clean Air Act. As was discussed on your visit, Arizona's power sector is committed to responsibly reducing emissions, particularly from coal generation facilities and legacy natural gas generation facilities. As this transition occurs, Arizona's utilities must be able to balance the need to bring more renewable energy online with the need to maintain an electric grid that can meet peak demand during our hot summer months.

As was discussed on your visit, Arizona's utilities hit records in 2023 for energy usage during an unprecedented string of 31 days above 110 degrees. To ensure Arizona's grid is able to meet this demand, our utilities expect that peaking gas units will be necessary to ensure our grid can responsibly meet peak demand, even as we complete a transition away from coal and legacy natural gas facilities.

We share EPA's goals of reducing carbon emissions to combat the effects of climate change and protect public health. Such efforts must be based on technologies that are proven to be viable at scale and must take into account the need to preserve grid reliability. **As you work to finalize the proposed rule**, **we urge you to take into account the maturity of decarbonization technologies that power plants are expected to adopt. Failure to do so could result in faster closures of existing, baseload power plants, higher utility bills, and reduced grid reliability.**

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As you saw on your visit, Arizona is a growing state that is leading the nation in attracting the industries of the future that will build the technologies that decarbonize our economy, protect our national security, and create great paying jobs for Arizona families. We are committed to making sure that Arizona makes meaningful progress toward improving air quality in the coming years, and we hope that EPA will continue to work together in partnership with our offices, the State of Arizona, Maricopa County, the Maricopa Association of Governments, and our partners, to identify actionable solutions which will improve air quality, without undermining Arizona's growing clean energy economy.

Sincerely,

Mark Kelly
United States Senator

Kyrsten Sinema
United States Senator