

**Revision to Contingency Measures Plan
in the Second Maintenance Plan
for the 1997 8-hour Ozone NAAQS**

Clark County, Nevada

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EXECUTIVE SUMMARY

This revision to the December 2021 *Second Maintenance Plan for the 1997 8-hour Ozone NAAQS, Clark County, Nevada* (2021 Second Ozone Maintenance Plan) is submitted by the Clark County Department of Environment and Sustainability, Division of Air Quality (DAQ) to the U.S. Environmental Protection Agency (EPA) to update the contingency plan identified in the 2021 Second Ozone Maintenance Plan. The necessity to revise the contingency plan is explained below.

In January 2022, DAQ, through the Nevada Division of Environmental Protection (NDEP), submitted the 2021 Second Ozone Maintenance Plan to fulfill the maintenance planning requirements of Section 175A of the Clean Air Act (CAA) for the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS). The plan summarized Clark County's continued maintenance of the 1997 8-hour ozone standard and included a plan to assure continued attainment over the next ten years (through 2033), including: a maintenance demonstration, a commitment to continue operating a monitoring network, a method for continued verification of attainment, and a contingency plan if ambient ozone concentrations approach or exceed the level of the 1997 8-hour ozone NAAQS.

The purpose of this State Implementation Plan (SIP) revision is to update the contingency plan contained in the 2021 Second Ozone Maintenance Plan to meet the requirements of CAA Section 175A(d). This revision provides clarity on the tracking and triggering mechanisms that will determine when contingency measures are needed and the actions resulting from trigger activation. Once approved, this plan will become federally enforceable and will serve as the contingency plan DAQ will use to assure prompt correction of any violation of the 1997 8-hour ozone NAAQS during the second maintenance period.

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ACRONYMS AND ABBREVIATIONS

BCC	Clark County Board of County Commissioners
CAA	Federal Clean Air Act
DAQ	Clark County Department of Environment and Sustainability, Division of Air Quality
EPA	U.S. Environmental Protection Agency
EPP	Early Progress Plan
I/M	Nevada Vehicle Inspection and Maintenance Program
MVEBs	Motor Vehicle Emissions Budgets
NAAQS	National Ambient Air Quality Standards
NDEP	Nevada Division of Environmental Protection
RTC	Regional Transportation Commission of Southern Nevada
SIP	state implementation plan
VMT	vehicle miles traveled
VOCs	volatile organic compounds

1.0 OVERVIEW

1.1 INTRODUCTION

DAQ, in conjunction with NDEP, requests that EPA approve this revision to its *Second Maintenance Plan for the 1997 8-hour Ozone NAAQS, Clark County, Nevada* submitted to EPA in January 2022. This revision updates the contingency plan contained in the 2021 Second Ozone Maintenance Plan and provides clarity on the tracking and triggering mechanisms that will determine when contingency measures are needed and the actions resulting from trigger activation.

Once approved, this document will become the contingency plan DAQ will use to assure prompt correction of any violation of the 1997 8-hour ozone NAAQS during the second maintenance period under Section 175A(d) of the CAA.

1.2 HISTORY OF THE 1997 OZONE NONATTAINMENT AREA

Clark County was designated in nonattainment of the 1997 8-hour ozone NAAQS in April 2004. The Phase 1 Implementation Rule issued by EPA on June 15, 2004, classified Clark County as a “basic” nonattainment area under Subpart 1 of the CAA. Following this, the state of Nevada submitted a request to EPA to reconsider the boundaries of the nonattainment designation for Clark County. EPA accepted the Nevada recommendations and issued a final rule in September 2004 delineating those boundaries.

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Phase 1 Implementation Rule. EPA and other entities petitioned for a rehearing. On June 8, 2007, the court reviewed its decision and decided to vacate only certain portions of the rule, including the classification determinations for areas designated under Subpart 1 of the CAA. After the court decision, EPA issued a memorandum (dated 6/15/2007) stating that nonattainment areas classified under “Subpart 1 are not currently subject to the June 15, 2007 submission date for their attainment demonstrations,” and established a transportation conformity rule that allowed states in nonattainment to submit an Early Progress Plan (EPP). The EPP allowed nonattainment areas to establish motor vehicle emissions budgets (MVEBs) that addressed the ozone NAAQS prior to a complete attainment demonstration. These actions obligated Clark County to develop the *Eight Hour Early Progress Plan for Clark County*. The Board of County Commissioners adopted and approved the EPP on June 17, 2008, after which it was submitted to EPA. In May 2009, EPA formally approved Clark County’s EPP.

On March 29, 2011, EPA determined that the Clark County 1997 8-hour ozone nonattainment area attained the ozone NAAQS based on monitoring data from 2007 through 2009 (76 FR 17343). In April 2011, Clark County submitted the *Ozone Redesignation Request and Maintenance Plan: Clark County, NV* (2011 Ozone Maintenance Plan) to EPA, requesting redesignation of the Clark County nonattainment area for the 1997 8-hour ozone NAAQS from nonattainment to attainment. On January 8, 2013, EPA approved the request; the Clark County nonattainment area was redesignated to “attainment” effective February 7, 2013 (78 FR 1149).

In the meantime, EPA revised the ozone NAAQS in 2008 to lower the allowable ambient concentration from 0.08 ppm to 0.075 ppm based on the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations (73 FR 16436). The EPA designated the entirety of Clark County as attainment for the 2008 ozone NAAQS, even though it had not yet redesignated portions of the County to attainment for the 1997 ozone NAAQS. (77 FR 30088, May 21, 2012). EPA called such areas with different designations for the two NAAQS “orphan maintenance areas.”

Under CAA Section 175A(b), states must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year maintenance period. U.S. EPA’s final implementation rule for the 2008 ozone NAAQS, however, revoked the 1997 ozone NAAQS and provided that, the CAA no longer required orphan maintenance areas, such as Clark County, to submit a second 10-year maintenance plan. *See* 40 CFR § 51.1105(d) (vacated).

The South Coast Air Quality Management District, among others, challenged EPA’s interpretation of the CAA with respect to second 10-year maintenance plan obligations in *South Coast Air Quality Management District v. EPA* 882 F.3d 1138 (D.C. Cir. 2018). The D.C. Circuit sided with the plaintiffs and vacated the portion of the regulations which had removed the CAA’s second year maintenance plan requirements for orphan maintenance areas. With this portion of the rule vacated, Clark County now remains under an obligation to submit a second 10-year maintenance plan for the 1997 ozone NAAQS.

In October 2018, DAQ, through NDEP, submitted the *Revision to Motor Vehicle Emissions Budgets in Ozone Redesignation Request and Maintenance Plan* (2018 Ozone Maintenance Plan Revision) to update the attainment inventory, maintenance demonstration, and MVEBs contained in the 2011 Ozone Maintenance Plan. On August 27, 2019, EPA issued final conditional approval of the 2018 Ozone Maintenance Plan Revision based on the county’s commitment to submit an additional SIP revision to reduce the safety margin allocations for the MVEBs within one year of the September 26, 2019 effective date (84 FR 44699).

In September 2020, DAQ, through NDEP, submitted the *Revision to Motor Vehicle Emissions Budgets for 1997 Ozone NAAQS* (2020 Ozone Maintenance Plan Revision) to update the emissions inventory and approved MVEBs and fulfill the County’s commitment to submit an additional SIP revision to reduce the safety margin allocations for the MVEBs contained in the 2018 Ozone Maintenance Plan Revision. On October 28, 2021, EPA issued final approval of the 2020 Ozone Maintenance Plan Revision (86 FR 59643).

In January 2022 DAQ, through NDEP, submitted the 2021 Second Ozone Maintenance Plan to fulfill the maintenance planning requirements of CAA Section 175A for the 1997 8-hour ozone NAAQS. The plan summarized Clark County’s continued maintenance of the 1997 8-hour ozone standard and presented a plan to assure continued attainment over the next ten years (through 2033), including: a maintenance demonstration, commitment to continue operating a monitoring network, a method for continued verification of attainment, and a contingency plan if ambient ozone concentrations approach or exceed the level of the 1997 8-hour ozone NAAQS.

2.0 CONTINGENCY MEASURES PLAN

CAA Section 175A(d) requires that a maintenance plan contain “contingency provisions, as necessary, to promptly correct any violation of the NAAQS that occurs...” (Calcagni 1992). DAQ need not adopt specific measures that will take effect without further action, but instead must identify measures to adopt in the future based on triggering events. Specifically, the contingency plan should include:

1. An explanation of the tracking and triggering mechanisms that will determine when contingency measures may be needed;
2. A description of the process for recommending and implementing contingency measures, with specific timelines for action;
3. A list of potential contingency measures.

The triggering of a response in the contingency measure plan does not automatically require a revision of the Clark County ozone SIP, nor would EPA redesignate Clark County for the 1997 8-hour ozone NAAQS. Instead, Clark County will address the increased ambient ozone concentrations by implementing one or more contingency measures, as appropriate. If the maintenance area continues to experience elevated ozone concentrations after implementing the contingency measures, DAQ will adopt additional measures until the design value is reduced below the level of the 1997 8-hour ozone NAAQS.

2.1 TRACKING AND TRIGGERING MECHANISMS

DAQ will continue to monitor ozone ambient air concentrations and the emissions inventory to determine whether the maintenance area is at risk of exceeding the 1997 8-hour ozone NAAQS. DAQ will examine ambient air quality monitoring data within 30 days of collection to verify if the 1997 8-hour ozone NAAQS has been exceeded. In addition, the Regional Transportation Commission of Southern Nevada (RTC) serves as another means of tracking mobile source volatile organic compounds (VOC) and nitrogen oxides (NO_x) emissions. RTC revises its transportation improvement plan every three years and these revisions are subject to a transportation conformity finding; that process will serve as a periodic check on whether emissions are consistent with the vehicle miles traveled (VMT) and MVEB projections in the 2021 Second Ozone Maintenance Plan.

The trigger for implementing the contingency measure plan will be a determination of a confirmed violation of the 1997 8-hour ozone NAAQS (a three-year average of the fourth highest values that is equal to or greater than 0.085 ppm) based on verified exceedances. The trigger date will be 60 days from the date of this determination.

2.2 ACTION RESULTING FROM TRIGGER ACTIVATION

Within 45 days of the trigger date, DAQ will notify EPA that an internal review process began to evaluate and adopt contingency measures, if appropriate. Within 90 days of the trigger date, DAQ will send EPA a draft information report outlining recommended actions. DAQ will then solicit stakeholder involvement through public forums (i.e., ozone working groups) to refine the process

of implementing the recommended actions. The Clark County Board of County Commissioners will hold a public hearing to consider the recommended contingency measures, along with any others that may address the confirmed violation. DAQ will adopt and implement the necessary measures within 18 months of the trigger date. Figure 2-1 shows the timeline leading up to implementation.

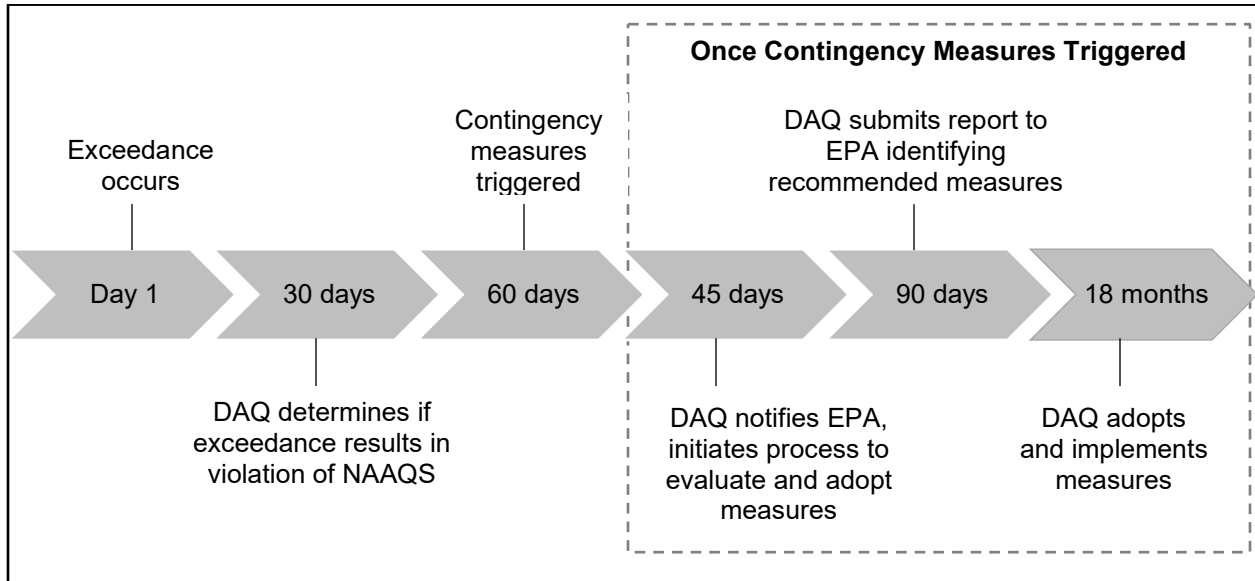


Figure 2-1. Timeline of Events Leading to Implementation of Contingency Measures.

2.3 POTENTIAL CONTINGENCY MEASURES

In addition to the six potential contingency measures outlined below, Clark County may evaluate other strategies to address any future ozone NAAQS violations in the most appropriate and effective manner practicable.

2.3.1 Reid Vapor Pressure Reduction

In conjunction with the Nevada Department of Agriculture, Clark County may consider requiring the reduction of gasoline Reid vapor pressure to below 9.0 psi within the nonattainment area during the summer ozone season.

2.3.2 Inspection/Maintenance (I/M) Program Changes and Additions

In conjunction with the Nevada Department of Transportation, Clark County may consider changing the cut points for VOCs and NO_x applicable to pre-1996 vehicles and/or increase the I/M waiver repair rate in Clark County.

2.3.3 Consumer and Commercial Products

Clark County may consider regulations to restrict the sale, offer for sale, or manufacture for sale of any consumer product, such as personal care products, automotive and industrial maintenance products, and pesticides that contain VOCs above specified limits.

2.3.4 Architectural Surface Coatings

Clark County may consider regulations to restrict the sale, supply, offer for sale, or solicitation of the application of architectural coatings that contain VOCs above specified limits.

2.3.5 Lawn and Garden Equipment Use

Clark County may consider regulations to restrict the use of gasoline-powered lawn mowers on announced ozone action days in the Clark County nonattainment area.

2.3.6 Establish/Enhance Trip Reduction Programs

In conjunction with the RTC, Clark County may establish and/or enhance employer-based community outreach and marketing efforts, employer rideshare program incentives, preferential parking for carpoolers and vanpoolers, emergency rides home for Club Ride members, travel assistance information on the Internet, and at public kiosks, transit passes to subsidize employees' transit expenses, and partnerships with vanpool leasing companies.