

February 3, 2016

U.S. Environmental Protection Agency
EPA Docket Center
EPA WJC West Building
Room 3334
1301 Constitution Ave., NW
Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OAR-2013-0572; and No. EPA-HQ-OAR-2015-0229

Subject: Comments on *Treatment of Data Influenced by Exceptional Events* and draft *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone*

To Whom It May Concern:

The Association of Air Pollution Control Agencies (AAPCA)¹ appreciates the U.S. Environmental Protection Agency's (EPA) publication of the proposed rule, *Treatment of Data Influenced by Exceptional Events*, and availability of draft *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*. This letter addresses both the proposed revisions to 40 CFR part 50 (Docket ID No. EPA – HQ – OAR – 2013 – 0572) and draft guidance (Docket ID No. EPA – HQ – OAR – 2015 – 0229).

In June 2015, AAPCA conducted a two-part survey of state environmental agency perspectives regarding background ozone and tools for regulatory relief.² A review of state comments on EPA's proposed revision to National Ambient Air Quality Standards (NAAQS) for ground-level ozone found that a majority of state environmental agencies commenting on the proposal raised concerns about background ozone and also identified limitations to the Clean Air Act tools highlighted by U.S. EPA for regulatory relief. These tools include the treatment of data related to: exceptional events under Section 319; international transport under Section 179; and Rural Transport Areas under Section 182. Twelve state agencies responded to additional questions about these tools:

¹ The Association of Air Pollution Control Agencies (AAPCA) is a national, non-profit, consensus-driven organization focused on assisting state and local air quality agencies and personnel with implementation and technical issues associated with the federal Clean Air Act. 18 state environmental agencies currently sit on AAPCA's Board of Directors. AAPCA is housed in Lexington, Kentucky as an affiliate of The Council of State Governments. You can find more information about AAPCA at: <http://www.cleanairact.org>.

² AAPCA, *State Environmental Agency Perspectives on Background Ozone & Regulatory Relief*, June 2015, http://www.csg.org/aapca_site/documents/AAPCASurvey-StateEnvironmentalAgencyPerspectivesonBackgroundOzoneandRegulatoryRelief-June201.pdf.

- All responding states said the process to exclude exceptional events data under Section 319 of the Clean Air Act was overly burdensome or limited by resource/time constraints;
- More than 80 percent of respondents identified the low likelihood of U.S. EPA approval of exceptional events exclusions as a concern for using the tool to address background ozone;
- Three-quarters of respondents stated that outdated rules or guidance limited the ability to use the Exceptional Events Rule for background ozone.

Many of AAPCA's members will be submitting individual agency comments on the proposed rule and draft guidance, but this letter represents two consensus issues from these members:

Regulatory Determinations for Exceptional Events

U.S. EPA suggests that the proposal more clearly defines the scope of the Exceptional Events Rule to apply only to certain types of regulatory actions. In particular, EPA proposes in regulatory text to interpret the phrase "determinations by the Administrator with respect to exceedances or violations of national ambient air quality standards" to cover five types of regulatory determinations³:

- An action to designate or redesignate an area as attainment, unclassifiable/attainment, nonattainment or unclassifiable for a particular NAAQS;
- The assignment or re-assignment of a classification category (marginal, moderate, serious, etc.) to a nonattainment areas to the extent this is based on a comparison of its "design value" to the established framework for such classifications;
- A determination regarding whether a nonattainment area has actually attained a NAAQS by its CAA deadline;
- A determination that an area has had only one exceedance in the year prior to its deadline and thus qualifies for a 1-year attainment date extension, if applicable; and
- A finding of State Implementation Plan (SIP) inadequacy leading to a SIP call to the extent the finding hinges on a determination that the area is violating a NAAQS.

While this proposed change seeks to remove ambiguity and increase certainty, AAPCA members are concerned that these categories may be insufficiently flexible and unnecessarily limit the utility of the Exceptional Events Rule for a variety of other compelling purposes. The proposal suggests that new, upcoming guidance, *Draft Guidance for Excluding Some Ambient Pollutant Concentration Data from Certain Calculations and Analyses for Purposes Other Than Retrospective Determinations of Attainment of the NAAQS*, which the Agency intends to finalize with the rule revisions, may help address these situations. However, the timing of this guidance

³ Regulatory text at: 80 FR 72894; Discussion at: 80 FR 72853 – 72854.

and the fact that it is not in the rule revisions may limit its applicability for other exceptional events.

EPA's Tiered Approach to Exceptional Events Demonstrations for Wildfire Events

The draft guidance describes a tiering strategy containing three tiers of demonstration “based on an event’s potential for O₃ formation at a given monitor and/or the history of non-event O₃ concentrations at the monitor,” in order to acknowledge that some fire events can be extreme or otherwise clearly stand out from normally occurring O₃ concentrations and, thus, may necessitate less evidence for the clear causal relationship analysis.”⁴

AAPCA members are concerned that the key factors used to screen an event into one of these three tiers, including the reliance on percentile ranking and a Q/D (emissions/distance) metric of ≥ 100 tons per day/kilometers, may inappropriately limit an agency’s ability to demonstrate causality. This may force air agencies into conducting more complex and resource-consuming exceptional events demonstrations than would otherwise be necessary to establish that an exceptional event occurred and contributed to elevated O₃ concentrations at a given monitor. Member recommendations regarding the Q/D metric issue range from elimination of the metric to significantly lowering the threshold.

Thank you for the opportunity to comment on this proposed rule. If you have any questions regarding our comments, please contact cwoods@csg.org or (859)244-8040.

Sincerely,



Clinton J. Woods, Executive Director
AAPCA

⁴ Draft *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations*, pg. 12.