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TCEQ Air Modeling and Data Analysis Section (Attn: Emily Saculla)  
MC164  
P.O. Box 13087  
Austin, TX 78711-3087

**Re: EXCEPTIONAL EVENTS DEMONSTRATION FOR 2022  
AND 2023 PM2.5 EXCEEDANCES AT HARRISON  
COUNTY, TRAVIS COUNTY, AND KLEBERG COUNTY**

Dear Ms. Saculla:

The Midwest Ozone Group<sup>1</sup>(“MOG”) is pleased to provide comments in support of this proposed demonstration and the use of the data involved in support of other demonstrations related to the events involved.

While the Clean Air Act (the “Act”) requires States to meet certain air quality standards, the Act also recognizes that exceptional events, including wildfires and prescribed burns, may sometimes prevent that from happening. Exceptional events can cause air quality monitoring data to exceed permissible concentrations of a

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<sup>1</sup> The membership of the Midwest Ozone Group includes: Ameren, American Electric Power, American Forest & Paper Association, American Iron and Steel Institute, American Wood Council, Appalachian Region Independent Power Producers Association, Associated Electric Cooperative, Berkshire Hathaway Energy, Big Rivers Electric Corp., Buckeye Power, Inc., Citizens Energy Group, City Water, Light & Power (Springfield IL), Cleveland-Cliffs Inc., Council of Industrial Boiler Owners, Duke Energy Corp., East Kentucky Power Cooperative, ExxonMobil, FirstEnergy Corp., Indiana Energy Association, Indiana-Kentucky Electric Corporation, Indiana Municipal Power Agency, Indiana Utility Group, Hoosier Energy REC, inc., LGE/ KU, Marathon Petroleum Company, National Lime Association, North American Stainless, Nucor Corporation, Ohio Utility Group, Ohio Valley Electric Corporation, Olympus Power, Steel Manufacturers Association, and Wabash Valley Power Alliance.

pollutant, also called an exceedance. When that happens, the Act directs the Administrator of the United States Environmental Protection Agency (USEPA) to exclude that data from further consideration if the state demonstrates to USEPA's satisfaction that the event caused the exceedance.

On December 19, 2024, the Texas Commission on Environmental Quality (TCEQ) issued a public notice regarding the availability for comment of a proposed “Exceptional Events for 2022 PM<sub>2.5</sub> exceedances at Harrison County, Travis County, and Kleberg County” and a proposed “Exceptional Events for 2023 PM<sub>2.5</sub> exceedances at Harrison County, Travis County, and Kleberg County.” The deadline for the submittal of comments on both is January 21, 2025.

The proposed exceptional event demonstrations detail the PM<sub>2.5</sub> episodes occurring in the state of Texas on 23 days in 2022 and 18 days in 2023. The proposed demonstrations address the PM<sub>2.5</sub> episodes occurring at three monitors located in Harrison County (Karnack monitor), Travis County (Austin Webberville Rd. monitor), and Kleberg County (National Seashore monitor). Specifically, for these three monitors, the proposed demonstrations provide technical documentation to support the TCEQ request to U.S. Environmental Protection Agency (EPA) to exclude PM<sub>2.5</sub> monitoring data for certain days in 2022 and 2023 strongly influenced by wildfires, prescribed fires, high winds blowing dust, dust from the Sahara Desert, and fireworks to celebrate days such as July 4<sup>th</sup>. In 2022 and 2023, air quality at these locations in Texas were impacted by PM<sub>2.5</sub> exceptional events on multiple dates.

The following comments are offered on behalf of MOG in support of these proposed exceptional event demonstrations and the demonstrations of other states seeking to recognize the same events.<sup>2</sup>

MOG is an affiliation of companies and associations that draws upon its collective resources to seek solutions to the development of legally and technically sound air quality programs that may impact on their facilities, their employees, their communities, their contractors, and the consumers of their products. MOG's primary efforts are to work with policy makers in evaluating air quality policies by encouraging the use of sound science. MOG has been actively engaged in a variety of issues and initiatives related to the development and implementation of air quality policy, including the development of transport rules (including exceptional events demonstrations, implementation of NAAQS standards, nonattainment designations, petitions under Sections 126, 176A and 184(c) of the Clean Air Act (“CAA”), NAAQS implementation guidance, the development of Good Neighbor State Implementation Plans (“SIPs”), the development of greenhouse gas and Mercury

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<sup>2</sup> These comments were prepared with the technical assistance of Alpine Geophysics, LLC.

and Air Toxics Standards Rules and related regional haze issues. MOG Members and Participants own and operate numerous stationary sources that are affected by air quality requirements including the PM<sub>2.5</sub> NAAQS.

By way of background, when amending the Clean Air Act in 2005, Congress intended to provide regulatory relief for NAAQS nonattainment resulting from exceptional events negatively affecting air quality that were outside of a state's control. That concern led to enactment of provisions specifically establishing the process by which USEPA could exclude air quality monitoring data directly related to an exceptional event. *See* 42. U.S.C. § 7619. Subsequently, USEPA promulgated the exceptional events rule. 40 C.F.R. § 50.14. Under the exceptional events rule, USEPA excludes “any data of concentration of a pollutant above the NAAQS (exceedances) if the air quality was influenced by exceptional events.” *Bahr v. Regan*, 6 F.4th 1059, 1066 (9th Cir. 2021) (cleaned up).

A state requesting data exclusion under the exceptional events rule must demonstrate “to the Administrator's satisfaction that such event caused a specific air pollution concentration at a particular air quality monitoring location.” 40 C.F.R. § 50.14(a)(1)(ii). That demonstration must include certain regulatory required information:

- (A) A narrative conceptual model that described the event(s) causing the exceedance or violation and a discussion of how emissions from the event(s) led to the exceedance or violation at the affected monitor(s);
- (B) A demonstration that the event affected air quality in such a way that there exists a clear causal relationship between the specific event and the monitored exceedance or violation;
- (C) Analyses comparing the claimed event-influenced concentration(s) to concentrations at the same monitoring site at other times to support the requirement at paragraph (c)(3)(iv)(B) of this section. The Administrator shall not require a State to prove a specific percentile point in the distribution of data;
- (D) A demonstration that the event was both not reasonably controllable and not reasonably preventable; and
- (E) A demonstration that the event was a human activity that is unlikely to recur at a particular location or was a natural event.

40 C.F.R. § 50.14(c)(3)(iv).

A state must also comply with pre-request requirements, which include notifying USEPA of the intent to request exclusion, flagging data to be excluded, engaging in public comments, and implementing mitigation measures. See 40 C.F.R. § 50.14(c)(2)(i); 40 C.F.R. § 50.14(c)(3)(v); 40 C.F.R. § 51.930. In short, there are three core statutory elements: (1) a clear causal relationship; (2) a showing that the event was not controllable, and (3) a showing that the event was human activity unlikely to recur a particular location or was a natural event.

Depending on the circumstances of a particular exceptional event, a particular tier of evidence is required to provide a compelling case to USEPA to exclude data under the Exceptional Events Rule. In instances where a state provides sufficient evidence to showcase that a given event is indeed an irregularity, USEPA will make a concurring determination and issue an exclusion of that specific event from the dataset. 40 C.F.R. 50.14(c)(2)(ii).

Wildland fires make up 44% of primary PM<sub>2.5</sub> emissions. See 89 Fed. Reg. 16214. As such, these events can cause exceedances that impact design values in a particular area.

USEPA has recognized that these particular events are exceptional and that states may request to exclude them from the dataset, given that a sufficient evidentiary standard is met. *Id.*; see generally, 81 Fed. Reg. 68216. There are several tiers of evidentiary showings related to PM<sub>2.5</sub> demonstrations. These three tiers create a ladder of increasing evidentiary burdens on the states to convince USEPA that an event merits exclusion.

- Tier 1 clear causal analyses are intended for wildland fire events that cause unambiguous PM<sub>2.5</sub> impacts well above historical 24-hour concentrations, thus requiring less evidence to establish a clear causal relationship.
- Tier 2 clear causal analyses are likely appropriate when the impacts of the wildland fire on PM<sub>2.5</sub> concentrations are less distinguishable from historical 24-hour concentrations, and require more evidence, than Tier 1 analyses.
- Tier 3 clear causal analyses should be used for events in which the relationship between the wildland fire and PM<sub>2.5</sub> 24-hour concentrations are more complicated than a Tier 2 analysis, when 24-hour PM<sub>2.5</sub> concentrations are near or within the range of historical concentrations, and thus require more evidence to establish the clear causal relationship than Tier 2 or Tier 1.

U.S. Environmental Protection Agency, *PM<sub>2.5</sub> Wildland Fire Exceptional Events Tiering Document* (April 2024) at 5. It is important to note that the overall processes for exceptional event demonstrations for wildfire ozone and wildland fire PM<sub>2.5</sub> are the same. See *id.* at 6. EPA has also acknowledged that, “[a]lthough the O<sub>3</sub>-specific tiering structure does not apply to PM, nearly all of the same types of individual analyses may apply to PM...”<sup>3</sup> MOG also agrees with TCEQ’s analysis of the impact of holiday fireworks, citing 40 CFR 50.14(b)(2), which states that “The Administrator shall exclude data from use in determinations of exceedances and violations where a State demonstrates to the Administrator's satisfaction that emissions from fireworks displays caused a specific air pollution concentration in excess of one or more national ambient air quality standards at a particular air quality monitoring location and otherwise satisfies the requirements of this section. Such data will be treated in the same manner as exceptional events under this rule, provided a State demonstrates that such use of fireworks is significantly integral to traditional national, ethnic, or other cultural events including, but not limited to, July Fourth celebrations that satisfy the requirements of this section.”

MOG notes that the proposed demonstrations show that the exceptional events affected the Harrison County (Karnack monitor), Travis County (Austin Webberville Rd. monitor), and Kleberg County (National Seashore monitor) monitors during each of the documented episodes. This caused average PM<sub>2.5</sub> concentrations at those three monitors to experience multiple daily Tier 1 and 2 level exceedances as defined in EPA’s Tiering Tool<sup>4</sup> during the relevant episodes.

MOG fully supports the TCEQ request that the USEPA Administrator exclude the ambient PM<sub>2.5</sub> concentrations measured at the Harrison County (Karnack monitor), Travis County (Austin Webberville Rd. monitor), and Kleberg County (National Seashore monitor) monitoring sites from calculation of annual PM<sub>2.5</sub> design values and from other regulatory determinations.

As set forth in its proposed demonstrations, TCEQ has shown that transported smoke and dust from the exceptional events caused the PM<sub>2.5</sub> exceedances at the Harrison County (Karnack monitor), Travis County (Austin Webberville Rd. monitor), and Kleberg County (National Seashore monitor) monitors. TCEQ

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<sup>3</sup> “Exceptional Events Guidance: Prescribed Fire on Wildland that May Influence Ozone and Particulate Matter Concentrations” August 2019 ([https://www.epa.gov/sites/default/files/2019-08/documents/ee\\_prescribed\\_fire\\_final\\_guidance\\_-\\_august\\_2019.pdf](https://www.epa.gov/sites/default/files/2019-08/documents/ee_prescribed_fire_final_guidance_-_august_2019.pdf))

<sup>4</sup> U.S. Environmental Protection Agency. “Tiering Tool – for Exceptional Events Analysis”. Air Quality Analysis. U.S. Environmental Protection Agency, March 26, 2024, <https://www.epa.gov/air-quality-analysis/tiering-tool-exceptional-events-analysis>

correctly notes that exclusion of the data on the relevant dates would result in continued attainment of the 2024 revised primary annual PM<sub>2.5</sub> NAAQS.

The proposed demonstrations go on to address such remaining factors as a narrative conceptual model describing the event as not reasonably controllable and not caused by human activity and satisfies requirements related to notification of the public of the events and participation of the public in the submission of this request.

The monitors and episode days that are carefully addressed in the proposed TCEQ demonstrations are far from the only ones that have influenced air quality during those time frames. Many PM<sub>2.5</sub> monitors in the same area also observed 24-hour average PM<sub>2.5</sub> concentrations at significantly elevated levels on the same exclusion dates, as well as on days around these dates. As has been noted, additional days, even if not currently 'regulatorily significant,' may in the future be relevant and significant not only to Texas but also to other states. USEPA should consider allowing this proposed demonstration to stand for those additional monitors and days, as needed.

MOG appreciates this opportunity to offer comments in support of the proposed TCEQ exceptional events demonstrations for the exceedances of the 2022 and 2023 Annual PM<sub>2.5</sub> NAAQS at the Harrison County (Karnack monitor), Travis County (Austin Webberville Rd. monitor), and Kleberg County (National Seashore monitor) monitors due to smoke from Canadian Wildfires, smoke from prescribed burning, high winds blowing dust, dust from the Sahara Desert, and smoke from fireworks. MOG also appreciates the opportunity to express support for consideration of this data in the development of demonstrations by other states related to these events. Congress has made it clear that data of the nature described in this proposed demonstration cannot and should not be used to implement a National Ambient Air Quality Standard and other matters of regulatory significance.

Very truly yours,



Edward L. Kropp  
Legal Counsel  
Midwest Ozone Group