



Huntington Center, Suite 2200
41 South High Street
Columbus, Ohio 43215
614-221-5100
Fax 614-221-0952
www.steptoe-johnson.com

Writer's Contact Information
317-946-9882
skipp.kropp@steptoe-johnson.com

January 20, 2025

Dr. James W. Boylan, Chief
Air Protection Branch
4244 International Parkway, Suite 120
Atlanta, Georgia 30354

Re: Exceptional Event Demonstrations for 129 event days

Dear Dr. Boylan:

The Midwest Ozone Group¹(“MOG”) is pleased to provide comments in support of these proposed demonstrations.

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 pollutant, also called an exceedance. When that happens, the Act directs the

¹ 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.

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 20, 2024, the Georgia Environmental Protection Division (EPD) issued a public notice regarding the availability for comment of proposed draft “Exceptional Event Demonstrations for 129 event days “ in the state of Georgia. The deadline for the submittal of comments is January 21, 2025.

The proposed exceptional events demonstrations detail the PM_{2.5} episodes occurring in the state of Georgia between 2021 and 2023. The proposed demonstrations specifically address PM_{2.5} episodes occurring at six monitors, including monitors in Augusta, Columbus, Macon, Sandersville, Atlanta, and Rossville, Georgia. Specifically, for these monitors, the proposed demonstrations provide technical documentation to support EPD’s request to U.S. Environmental Protection Agency (EPA) to exclude PM_{2.5} monitoring data for multiple days in 2021, 2022, and 2023 that were strongly influenced by unusual events including holiday fireworks, prescribed fires, and Canadian wildfires.

The following comments are offered on behalf of MOG in support of these proposed exceptional events demonstrations.²

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 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_{2.5} NAAQS.

² These comments were prepared with the technical assistance of Alpine Geophysics, LLC.

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).

USEPA has recognized that 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_{2.5} 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_{2.5} 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_{2.5} 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_{2.5} 24-hour concentrations are more complicated than a Tier 2 analysis, when 24-hour PM_{2.5} 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_{2.5} 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_{2.5} are the same. See *id.* at 6. EPA has also acknowledged that, “[a]lthough the O₃-specific tiering structure does not apply to PM, nearly all of the same types of individual analyses may apply to PM...”³

MOG also agrees with EPD’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 events affected the monitors Augusta, Columbus, Macon, Sandersville, Atlanta, and Rossville, Georgia, during each of the documented episodes. This caused average PM_{2.5} concentrations at monitors in those area to experience multiple daily Tier 1 and 2 level exceedances, as defined in EPA’s Tiering Tool⁴, during the relevant periods and as seen in EPD’s demonstrations.

MOG fully supports the EPD request that the USEPA Administrator exclude the ambient PM_{2.5} concentrations measured at the Augusta, Columbus, Macon, Sandersville, Atlanta, and Rossville, Georgia, monitoring sites during all these documented events from calculations of annual PM_{2.5} design values and from other regulatory determinations.

As set forth in its proposed demonstrations, EPD has shown that the documented events caused the PM_{2.5} exceedances at the monitors in Augusta,

³ “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)

⁴ 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>

Columbus, Macon, Sandersville, Atlanta, and Rossville, Georgia. EPD correctly notes that exclusion of the data on the relevant dates would result in attainment of the 2024 revised primary annual PM_{2.5} NAAQS at these monitors.

The proposed demonstrations address such remaining factors as a narrative conceptual model describing the events as not reasonably controllable and not caused by human activity and satisfy requirements related to notification of the public of the events and participation of the public in the submission of these requests.

The monitors and episode days that are carefully addressed in the proposed EPD demonstrations are far from the only ones that have influenced air quality during those time frames. Many PM_{2.5} monitors in the same area also observed 24-hour average PM_{2.5} 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 Georgia but also to other states. USEPA should consider allowing these proposed demonstrations to stand for those additional monitors and days, as needed.

MOG appreciates this opportunity to offer comments in support of the proposed EPD exceptional events demonstrations for the exceedances of the revised 2024 Annual PM_{2.5} NAAQS at the Augusta, Columbus, Macon, Sandersville, Atlanta, and Rossville, Georgia, monitoring sites due to these well documented exceptional 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