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February 3, 2016

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
EPA Docket Center (EPA/DC)
Mailcode 28221T
1200 Pennsylvania Avenue, NW.
Washington, DC 20460

RE: Treatment of Data Influenced by Exceptional Events: Proposed
Rule. Docket ID No. EPA-HQ-OAR-2013-0572

Dear Administrator McCarthy:

The American Lung Association considers the health-based National Ambient Air Quality Standards (NAAQS) to be core components of the Clean Air Act and essential to protecting the health of all Americans, particularly those who suffer from lung disease. For that reason, how the U.S. Environmental Protection Agency defines and treats data influenced by exceptional events can impact how truly protective those standards are. The Lung Association appreciates the opportunity to provide comment on the proposed rule addressing those data.

The Clean Air Act definition and principles limit the classification of events as “exceptional.” So should EPA.

The Clean Air Act in Section 319(b) makes clear that events that affect air quality are defined by strict limitations on the use of the term “exceptional.” Exceptional events are limited to those that meet these four requirements [42 U.S.C. §7619(b)(1)(A)]:

The term "exceptional event" means an event that—

- (i) affects air quality;
- (ii) is not reasonably controllable or preventable;
- (iii) is an event caused by human activity that is unlikely to recur at a particular location or a natural event; and
- (iv) is determined by the Administrator through the process established in the regulations promulgated under paragraph (2) to be an exceptional event.

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The Clean Air Act also includes specific language that further defines an exceptional event, focusing on the evidence that these events actually present [[42 U.S.C. §7619(b)(3)(B)]:

Requirements

Regulations promulgated under this section shall, at a minimum, provide that—

(i) the occurrence of an exceptional event must be demonstrated by reliable, accurate data that is promptly produced and provided by Federal, State, or local government agencies;

(ii) a clear causal relationship must exist between the measured exceedances of a national ambient air quality standard and the exceptional event to demonstrate that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location;

(iii) there is a public process for determining whether an event is exceptional; and

(iv) there are criteria and procedures for the Governor of a State to petition the Administrator to exclude air quality monitoring data that is directly due to exceptional events from use in determinations by the Administrator with respect to exceedances or violations of the national ambient air quality standards.

Furthermore, the Clean Air Act states certain principles that must be core to these decisions [42 U.S.C. §7619(b)(3)(A)]:

Principles

In promulgating regulations under this section, the Administrator shall follow—

(i) the principle that protection of public health is the highest priority;

(ii) the principle that timely information should be provided to the public in any case in which the air quality is unhealthy;

(iii) the principle that all ambient air quality data should be included in a timely manner,² an appropriate Federal air quality database that is accessible to the public;

(iv) the principle that each State must take necessary measures to safeguard public health regardless of the source of the air pollution; and

(v) the principle that air quality data should be carefully screened to ensure that events not likely to recur are represented accurately in all monitoring data and analyses.

The first principle shows clearly the resolution of the Congress that the “highest priority” must be the “protection of public health.” This firmly aligns with the core definition of the NAAQS: that they must be established “requisite to protect the public health” incorporating “an adequate margin of safety” [42 U.S.C. §7409 (b) (1)].

The EPA has heard repeatedly from the American Lung Association that, too often, decisions made on setting the NAAQS fail to provide that requisite health protection based on the scientific evidence. Exceptional events decisions can also weaken that protection by labeling too many events as “off limits” to include in evaluating whether an area meets the NAAQS. For that reason, the American Lung Association urges EPA to recognize these weakening provisions in the proposed rule and strengthen them.

EPA should not remove or weaken key aspects of the definition of “exceptional event”

In the proposal, EPA would remove or reframe key language, which would significantly weaken the protection for public health by expanding the opportunities for states to classify events as “exceptional” and eliminate them from consideration in the nonattainment designations and implementation plans. These changes risk exposing Americans to pollution that threatens public health. This is the pollution that the Clean Air Act clearly intended to be cleaned up. Below are some key changes of concern to the Lung Association:

Weakening of the evidence required to demonstrate the exceptional quality of the event.

EPA proposes steps that would significantly weaken the limits on the use of exceptional events. All seem grounded in an attempt to create less workload burden for states, but all erode the current protection already in place, especially if all are adopted.

Do not eliminate the “but for” clause.

First, EPA proposes to eliminate the “but for” requirement currently in place: that there “would have been no exceedance or violation but for the event.” 40 C.F.R. 50.14(c)(3)(iv). Simply, this provision requires evidence core to the definition of all exceptional events, which is that “a clear causal relationship” exists that “demonstrate(s) that the exceptional event caused a specific air pollution concentration at a particular air quality monitoring location.”

Do not weaken Weight of Evidence Demonstration.

Second, EPA proposes to rely instead on the states’ demonstration of the weight of evidence showing that the event meets the requirements. Such demonstrations are often unconvincing, as EPA has rejected several plans because of weak weight of evidence arguments. For example, EPA rejected SIPS using these weight of evidence arguments from both the Baltimore and Philadelphia metro areas in 2009. Others have been challenged in court.

Do not remove comparisons to historical fluctuations.

Third, EPA proposes to remove requirements to examine historical fluctuations, instead relying on comparisons to trends within historical concentration data. This change would take another step back from the specific individual event comparisons required by the Act to allow comparisons to a broader base of days, increasing the likelihood that they will be shown as exceptional.

The American Lung Association urges EPA to reject these weakening changes and allow the process of determining exceptional events to retain the stringent, and ultimately more health protective, approach required by the law.

Expanding “not reasonably controlled or preventable” too broadly and contrary to other EPA actions

Limit classification of transported emissions.

EPA proposes to dismiss “event-related emissions that originate outside the boundaries of the state” as “‘not reasonably controllable or preventable’ even if no party has made any effort to control them.” 80 Fed. Reg. at 72,857; 40 CFR §50.14(b)(7)(v).

This language ignores the long history of states violating the “good neighbor” provision of the Clean Air Act found in Sections 110 and 126. In fact, EPA demonstrated in the Cross State Air Pollution Rule the reality that pollution transported across state lines can have episodic impacts that trigger violations of the NAAQS that are totally out of the control of downwind states.

Transported pollution must only qualify as an exceptional event if it meets the threshold requirements for such events. The first is that the emissions must be from a qualifying natural event, such as a wildfire. If the emissions are from human actions, the law requires such events to meet much tighter definitions. That is, they must be unlikely to recur at a particular location; they cannot be reasonably controllable or preventable; and in particular, they cannot result from source or state noncompliance with the law. Furthermore, the other provisions discussed previously also must be met, including that the exceedance must be “directly due” to the event in the other state.

Do not assume that existing SIPs cover these events appropriately.

EPA also proposes to accept these transported emissions as exceptional events if they are covered in the nonattainment or maintenance State Implementation Plans (SIPs) issued within the prior five years. In other SIP actions, EPA approval does not mean that the SIPs automatically “constitute a robust assessment of those controls that are reasonable to have in place to address air quality impacts from particular types of events that may become the focus of exceptional events demonstrations” [80 Fed. Reg. at 72,859/1], just to cite one example of this flawed rationale.

Do not classify the cleanup after a natural event as “a natural event.”

EPA suggests in the proposal that the steps taken to clean up after a hurricane or wildfire would continue to be considered part of that natural event, and qualify as an exceptional event. Such an interpretation could not be further from the primary goal of protecting public health.

The history of cleanup after disastrous events has often contributed more pollution to the air than the initial event did. Burning debris, operating dirty diesel heavy equipment, demolishing damaged buildings—all are examples of the additional air pollution burden created after disastrous natural events. However, these cleanup efforts can be accomplished with much lower

emissions, and groups have organized plans to educate communities about the options, including EPA's own report, *Planning for Disaster Debris Guidance*, PA530-K-08-001, issued March 2008.

EPA should require mitigation plans

The Lung Association supports requiring all areas to develop mitigation plans to address exceptional events. Such a requirement would meet the fundamental principles in the Act that defines addressing exceptional events: "that protection of public health is the highest priority" and "that each State must take necessary measures to safeguard public health regardless of the source of the air pollution." These plans should incorporate all sources of pollution that contribute to violation or exceedances of the NAAQS.

Conclusion

The American Lung Association urges EPA to reconsider and remove the flawed changes to the proposed rule that would weaken the ability to protect public health as required by the Clean Air Act. If EPA continues to incorporate these weakening changes, millions of children, older adults, people with lung disease, heart disease and other chronic health conditions, low-income people and even healthy adults who work or play outside will risk continued threats to their health. They deserve EPA's protection.

Sincerely,

A handwritten signature in black ink that reads "Paul G. Billings". The signature is written in a cursive, flowing style.

Paul G. Billings
Senior Vice President, Advocacy

