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The Honorable Andrew Wheeler,
Acting Administrator
U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW
Washington, DC 20640
Submitted via Ambient Air Guidance@epa.gov.

RE: Comments on EPA's Proposed Revised Policy on Exclusions from
"Ambient Air"

Dear Acting Administrator Wheeler:

The American Lung Association appreciates the opportunity to submit comments on EPA's draft of the "Revised Policy on Exclusions from 'Ambient Air'." The Lung Association opposes the proposed weakening of the policy defining "ambient air."

The American Lung Association is the leading organization working to save lives by improving lung health and preventing lung disease, through research, education and advocacy. During our 115-year history, we have fought hard to improve the air we breathe and to reduce the burden of lung disease on individuals and their families.

The air we breathe is essential to life and to reducing the burden of lung disease. The quality of the air we breathe outdoors affects each of us, including millions who face greater risks from unhealthy air. Unfortunately, with this proposal, EPA would severely weaken some key long-standing protections and permit more air pollution to threaten the health of the public.

Protecting human health from pollution in the air we breathe –ambient air—is the cornerstone of the Clean Air Act. As the Act defines it, the primary purpose of the law is "to protect and enhance the quality of the Nation's air resources so as to promote the public health." [42 U.S.C. §4201(b)]. The law requires EPA to establish specific, enforceable limits on pollution in ambient air—the National Ambient Air Quality Standards—as

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one of many tools to protect the health of Americans from what the Act recognized even then as "mounting dangers to the public health and welfare." [42 U.S.C. §4201(a)].

Unhealthy air continues to harm the public health and even can threaten life itself. Emissions from utilities, industrial, commercial and other stationary sources can harm the health and threaten the lives of those who live near these facilities, as well as those who live far away. Many of those who live near such facilities are those who face greater risk because they are The Lung Association has urged EPA repeatedly to take steps to reduce those emissions and protect American lives and health.

Under its regulatory responsibility, EPA defined ambient air as "that portion of the atmosphere, external to buildings, to which the general public has access." [40 CFR 50.1 (e)]. Since 1980, EPA has added clarification to that requirement, as expressed in a letter from Administrator Douglas M. Costle to Senator Jennings Randolph. That "Costle letter" added language that has been used since then to reflect EPA policy, according to EPA, adding that "the exemption from ambient air is available only for the atmosphere over land owned or controlled by the source and to which public access is precluded by a fence or other physical barriers." (Costle, 1980).

EPA acknowledges that it has historically used this interpretation to call for a substantive physical barrier that would restrict unauthorized access to the facility. The Costle letter is cited in the draft policy revision and has been frequently cited in EPA responses to questions following guidance, particularly in a June 2007 memo from Stephen Page, Director of the Office of Air Quality Planning & Standards. (Page, 2007). For example, in a letter on a boundary question in an Alaska project, the EPA Region 10 office repeatedly explained that EPA requires a "fence or other physical barrier." (Helm, 2007).

EPA's long-standing definition has flaws, as pointed out in a 1989 General Accounting Office report "Air Pollution: EPA's Ambient Air Policy Results in Additional Pollution" (GAO, 1989). The report finds that EPA had reached differing decisions based on that definition, and that had allowed increased emissions. The GAO cited several examples when EPA accepted industrial efforts to acquire additional land to exempt those facilities from the requirements faced as ambient air. The GAO concluded that "EPA's ambient air policy allows the exclusion of large tracts of company-controlled land from the requirements of the Clean Air Act." The GAO urged EPA to "initiate a formal rulemaking process to redefine ambient air in a manner that is more protective of the environment." (GAO, 1989). However, EPA did not follow that recommendation.

This American Lung Association supports a broader, more protective definition of "ambient air" in keeping with the stated intent of the Clean Air Act and with our own adopted policy that "All people are entitled to breathe healthy air and to be free of the adverse effects of indoor and outdoor air pollution." (American Lung Association, 2016). The dictionary defines "ambient" as "existing or present on all sides," or, medically, "surrounding on all sides"; neither definition bears any relationship to beginning at a fence across a field (Merriam-Webster, 2019). The air that an employee or contractor, delivery person, or spouse dropping off an employee breathes when outside of the facility is ambient air. These individuals deserve protection from the harm present in any pollution outdoors.



Unfortunately, EPA now seems prepared to further weaken the historic definition and reverse decades of policy for no defined, much less health-protective reason. EPA offers no explicit rationale for this change. EPA argues that less obvious or invisible barriers, such as "video surveillance and monitoring, clear signage, routine security patrols, drones and other potential future technologies" would adequately define the boundaries of the facility and the "ambient air" outside its reach. (Proposed revision, 5). Scavenging for justification, EPA cites a Ninth Circuit U.S. Court of Appeals decision in 2012, where the court allowed a drilling project in Alaska to avoid a fence. EPA minimizes the fact that the facility had a clear boundary in the water of the Arctic Ocean that lay next to the facility.

These options fail basic tests. These options would not prevent access. Unlike the requirement in the Costle letter, these options would not "preclude" access and likely would not even "deter" access, as EPA incorrectly claims in the proposal. Many of these alternative systems would be impossible to monitor by any state, local governments or tribes. A facility says it will operate a drone to provide a boundary, yet how would any state or local government know if the drone was working, much less working effectively? While EPA recognizes that fences can be crossed, they propose systems like "clear signage" that are even more easily bypassed. As with the current requirements, the states, local governments and tribes will need to assess each plan, while losing the stronger, simple tools that EPA has historically provided as a backstop. Their work would be much harder.

This proposal also fundamentally erodes protections available to the public even under the current approach by weakening the monitoring and modeling of some of the nation's most dangerous air pollutants. Historically, EPA has required states and local governments to locate monitors adjacent to such a facility to assess how polluted the ambient air is. The monitoring allows tracking to protect the public from the emissions and develop appropriate modeling to ensure compliance with the state implementation plans required under specific National Ambient Air Quality Standards. Accurate measurement, modeling and assessment of criteria NAAQS such as sulfur dioxide and lead require accurate monitoring and modeling of major sources of these emissions.

The boundaries matter. Millions of Americans live or work near such facilities. Untold numbers of others routinely visit these facilities in their roles as mail carrier or contract worker. EPA estimates that more than 3.3 million people live in a nonattainment area for sulfur dioxide, based on the 2010 NAAQS. More than 9.5 million live in areas currently in nonattainment for lead. (Green Book, 2018). The opportunity for a source to expand its area exempted from ambient air standards, increasing the likelihood that the facility would increase emissions.

Ignoring the reality of how to limit access for a facility would reduce the protection for those who live and work downwind of such a facility. Allowing a facility to carve out more land that does not count as "ambient" would open the door for them to spew more pollution into the air.

The American Lung Association urges EPA to withdraw the proposed policy document and to reject the practice of making significant regulatory changes outside of the established notice and comment rulemaking process. Further, if EPA determines to proceed with a redefinition of "ambient air," the Lung Association requests that EPA undertakes a full analysis of the public



health impacts of this change complete with review by the Science Advisory Board and public notice and comment process.

Sincerely,



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References

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