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## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

January 16, 2015

The Honorable Pete Olson  
United States House of Representatives  
2133 Rayburn House Office Building  
Washington, DC 20515

Dear Congressman Olson:

Per your office's request, the Texas Commission on Environmental Quality (TCEQ) is providing information regarding potential issues that may arise from the United States Environmental Protection Agency's (EPA) reliance on its authority under Federal Clean Air Act, §319 to exclude the use of air quality monitoring data influenced by exceptional events in addressing criticisms of its proposal to revise the ozone National Ambient Air Quality Standard (NAAQS) on December 17, 2014. The EPA is proposing to revise the ozone NAAQS to as low as 60 parts per billion, approaching or at background levels for many areas of the country. Under its proposal, the EPA appears to rely on the fact that excluding air quality monitoring data influenced by exceptional events would provide a mechanism to prevent areas from being designated nonattainment based on certain air quality issues beyond an area's control. The unprecedented promulgation of a standard in such proximity to background levels increases the importance of excluding measured concentrations that are influenced by exceptional events without providing an adequate mechanism for approval of these events in a timely manner.

Historical problems with exceptional event demonstrations will be amplified without further specific guidance and rules that provide for clear review and approval criteria. The TCEQ has already struggled with providing the overwhelming evidence of exceptional event impacts required by the EPA for its approval of exceptional event demonstrations. This is particularly true for extreme naturally occurring events that EPA's Interim Exceptional Events Guidance suggests would require a lesser degree of supporting information. For example, the TCEQ initially submitted a 210-page package to demonstrate that particulate matter from the Chihuahuan Desert of Mexico impacted the El Paso ambient air monitoring stations and caused an exceedance of the NAAQS on specific days from 2010 through 2012. In addition, the TCEQ submitted a 59-page addendum to provide additional detail in order to address subsequent EPA questions. As of January 15, 2015, the decision is still pending EPA action. This exceptional event package provided detailed evidence using well-established historical trends and clear satellite images of dust storms in the Chihuahuan Desert. To our knowledge, such detailed evidence does not exist for ozone formation in rural areas like Brewster and Randall Counties in Texas. The research required to understand the potential contributing natural and anthropogenic sources and historical fluctuations, much less to establish the clear, causal relationship between the air quality measurement and the event to the detailed degree required by the EPA presents a significant challenge for Texas and other states. Without specific review and approval criteria from the EPA, states have little idea what level of detail is sufficient for EPA's approval of an exceptional event demonstration.

This challenge is further magnified when considering the expedited timing mechanisms for exceptional event demonstrations under a revised air quality standard. The proposed ozone rule gives states 12 months from the time of promulgation to provide any exceptional event demonstration documents to the EPA for events occurring in 2013, 2014, and 2015 if the data are to be excluded for purposes of designations. This exceptional event submission deadline also coincides with the deadline for states to make designation recommendations to the EPA (another labor-intensive exercise). The EPA's Administrator would then have 12 months to make final designations while concurrently reviewing exceptional event packages. The proposed deadlines, should the EPA intend to meet its statutory deadlines for designations, do not give adequate time for the development and approval of state demonstrations requesting the exclusion of data from the first round of designations under the new standard. For comparison purposes, the TCEQ submitted four particulate matter of 2.5 microns or less (PM<sub>2.5</sub>) exceptional event packages in 2013; one was approved eight months after the submission, and the other three are still pending as of January 15, 2015.

EPA's reliance on its exceptional event authority to mitigate the potential for areas to be designated nonattainment of the revised ozone standard assumes that states are able to provide the required documentation of the event within the expedited timeline provided in the proposed rule. As shown, the lack of clear guidance, the exhaustive evidence required for approval, the lack of available information for rural areas in particular, and the expedited timeline may prevent states from accomplishing this task. The unfortunate consequence, then, is that an area may be designated nonattainment years before enough is understood about ozone formation in an area to develop a meaningful exceptional event demonstration. However, there is no authority for the EPA to redesignate an area based on changes to past air quality data. Redesignations must be made in compliance with the requirements of FCAA, §107(d)(3), which requires that an area demonstrate that it is currently attaining the NAAQS, in addition to meeting other specific requirements, such as having an approved SIP, and demonstrating that the improvement in air quality is due to permanent and enforceable emission reductions resulting from the implementation of the SIP and applicable federal requirements. Furthermore, the exceptional event rules do not provide timing requirements for EPA review or a mechanism for states to appeal EPA disapprovals. Should states be unable to meet the expedited timelines under a revised standard or overcome the uncertainty surrounding EPA's required level of detail, EPA's ozone attainment/nonattainment designation would be final.

If you would like to discuss the TCEQ's concerns in more detail, please feel free to contact Mr. David Brymer at (512) 239-1725 or Mr. Richard Chism at (512) 239-0538.

Sincerely,



Steve Hagle, P.E., Deputy Director  
Office of Air

Texas Commission on Environmental Quality