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March 27, 2026

Mr. Mark R. Gagen, Air Pollution Monitoring Program Manager
Air Quality Division
Department of Environmental Quality
200 West 17th Street, 3rd Floor
Cheyenne, Wyoming 82002.

Re: Ozone 2021 Wildfire Exceptional Event Demonstration

Dear Mr. Gagen:

On February 26, 2026, the Wyoming Air Quality Division (AQD) published a notice seeking comment on a proposed Ozone 2021 Wildfire Exceptional Event Demonstration. The comment deadline is March 30, 2026. The Midwest Ozone Group ("MOG")¹ is pleased to provide comments in support of the proposed demonstration.

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 their facilities, their employees, their communities, their contractors, and the consumers of their products. MOG's primary

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., Citizens Energy Group, City Water, Light & Power (Springfield IL), Cleveland-Cliffs Inc., Council of Industrial Boiler Owners, East Kentucky Power Cooperative, ExxonMobil, Monongahela Power Company, Indiana Energy Association, Indiana-Kentucky Electric Corporation, Indiana Municipal Power Agency, 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.

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, 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, exceptional events and 179B demonstrations, and related regional haze and climate change issues.

I. Regulatory 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 U.S. Environmental Protection Agency ("U.S. EPA") could exclude air quality monitoring data directly related to an exceptional event. See 42 U.S.C. § 7619. Subsequently, U.S. EPA promulgated the exceptional events rule. 40 C.F.R. § 50.14.

Clean Air Act §7619(b) addresses exceptional events in accordance with a process by which air quality monitoring data affected by unusual, uncontrollable events may be excluded from decisions about whether an area meets the National Ambient Air Quality Standards. Specifically, CAA §7619(b)(2)(B) requires 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.

On October 3, 2016, EPA finalized a rule provided guidance entitled "Treatment of Data Influenced by Exceptional Events." 81 Fed. Reg. 68216. However, on March 12, 2025, EPA Administration Zeldin announced that the agency intends to revisit this rulemaking for exceptional events. See U.S. Environmental Protection Agency, Press Release: EPA Launches Biggest Deregulatory Action in U.S. History (March 12, 2025).

In furtherance of that announcement, on October 16, 2025, Aaron Szabo, AA, Office of Air and Radiation released a memorandum to the Regional Administrators and Deputy Regional Administrators titled, "EPA Policy on Provisions to Allow Wildland Prescribed Fire in Clean Air Act State Implementation Plans." See: https://www.epa.gov/system/files/documents/2025-10/signed_final_prescribed-fire-policy-memo_25-06684-oar-gsg.pdf. This memo specifically provides that:

- "Prescribed fire" has the same definition as in the Exceptional Events Rule at 40 CFR 50.1(m): "any fire intentionally ignited by management actions in accordance with applicable laws, policies, and regulations to meet specific land or resource management objectives."
- CAA §319(b) and the EPA's Exceptional Events Rule establish procedures and criteria that allow for the exclusion of data influenced by an exceptional event from certain regulatory decisions regarding attainment and maintenance of the NAAQS, including exceptional events. Prescribed fires on wildland are eligible for treatment as exceptional events and air quality monitoring data influenced by such events can therefore be excluded from certain regulatory decisions regarding the NAAQS if the CAA and Exceptional Events Rule criteria are met."

Importantly, the subject Exceptional Events Rule identifies as series of actions that were deemed to be the types of regulatory determinations that provide the basis for approval by the Administration of an exceptional events demonstration. In addition to the several specific categories involved, this guidance recognizes that the regulatory

significance of events is also a matter of case-by-case determinations of the Administrator, as set forth below:

- (A) An action to designate an area, pursuant to Clean Air Act §107(d)(1), or redesignate an area, pursuant to Clean Air Act §107(d)(3), for a particular national ambient air quality standard;
- (B) The assignment or re-assignment of a classification category to a nonattainment area where such classification is based on a comparison of pollutant design values, calculated according to the specific data handling procedures in 40 CFR Part 50 for each national ambient air quality standard, to the level of the relevant national ambient air quality standard;
- (C) A determination regarding whether a nonattainment area has attained the level of the appropriate national ambient air quality standard by its specified deadline;
- (D) A determination that an area has data for the specific NAAQS, which qualify the area for an attainment date extension under the CAA provisions for the applicable pollutant;
- (E) A determination under Clean Air Act §110(k)(5), if based on an area violating a national ambient air quality standard, that the state implementation plan is inadequate under the requirements of Clean Air Act §110; and
- (F) Other actions on a case-by-case basis as determined by the Administrator.

40 C.F.R. Section 50.14(a); 81 Fed. Reg. at 68217 (emphasis added).

EPA repeatedly emphasizes its intention to rely on the weight of evidence approach, assessing demonstration on a case-by-case basis. Notably, EPA suggests that a state's demonstration "does not necessarily need to be precise" and that the weight of evidence approach is intended to provide a process that is not technically demanding. 81 Fed. Reg. 68227 n.19. In determining what the explicit standard of weight of evidence is, EPA itself likens it to "preponderance of the evidence," which contemplates whether an outcome is more probable than not. 81 Fed. Reg. 68230.

It is also significant that in an EPA memorandum dated April 4, 2019, from EPA Air Quality Assessment Division Director Richard Wayland to the Regional Air Division Directors, nonbinding guidance was provided that specifically recognizes circumstances under which an air agency may seek to exclude specific data influenced

by events even in areas that attain NAAQS standards. The Wayland memo “identifies the most common determinations and analyses not covered by the Exceptional Events Rule, and clarifies for each of them whether there is a separate existing mechanism (apart from the Exceptional Events Rule) under which the exclusion, selection, or adjustment of air quality monitoring data may be appropriate,” noting that “...monitoring data exclusion, selection, or adjustment may be considered for the following types of determinations and analyses...” The list articulated includes “... estimating base and future year design values for ozone and PM2.5 SIP attainment demonstrations. See Richard Wayland, Director Air Quality Assessment Division, U.S. Environmental Protection Agency, Memorandum: “*Additional Methods, Determinations, and Analyses to Modify Air Quality Data Beyond Exceptional Events*” (April 4, 2019) at p.3. See: https://www.epa.gov/sites/default/files/2019-04/documents/clarification_memo_on_data_modification_methods.pdf

A state requesting data exclusion must also comply with pre-request requirements, which include notifying U.S. EPA 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 at 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 U.S. EPA 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, U.S. EPA 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).

U.S. EPA 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. U.S. EPA's guidance on wildfire events that may influence ozone concentrations outlines a tiered approach for addressing the clear causal relationship element within a wildfire/ozone demonstration as follows:

Tier 1 clear causal analyses should be used for wildfire events that cause clear O₃ impacts in areas or during times of year that typically experience lower O₃ concentrations, and are thus simpler and less resource intensive than analyses for other events. Tier 2 clear causal analyses are likely appropriate when the impacts of the wildfire on O₃

levels are less clear and require more supportive documentation than Tier 1 analyses. Tier 3 clear causal analyses should be used for events in which the relationship between the wildfire and the O₃ exceedance or violation is more complicated than the relationship in a Tier 2 analysis, and thus would require more supportive documentation than Tier 2 analyses.²

II. AQD Exceptional Events Demonstration

The AQD demonstration states that, “[d]uring the summer of 2021, Wyoming, as well as much of the western U.S., experienced excessive quantities of smoke from numerous wildfires burning in Northern California, Oregon, Washington, Idaho and Montana that impacted air quality. Over the summer, there were twenty-four (24) days when AQD and/or Federal monitors recorded 8-hour O₃ concentrations that exceeded the 2015 NAAQS of 0.070 ppm. These days occurred between July 9 and August 23, 2021. For most of these days, there were multiple exceeding AQD and/or federal monitors. The total number of exceeding monitor-days in this Exceptional Event Demonstration (EED) is eighty-two (82) monitor-days.” The demonstration shows that these ozone exceedances were due to Exceptional Events caused by wildfire smoke outside of the AQD’s regulatory purview.

MOG agrees that the ozone exceedances in this demonstration qualify for a Tier 1 analysis according to EPA Guidance³ and that the proposed demonstration addresses all required components of a request to exclude data from regulatory decisions as detailed in 40 CFR Part 50.14. It is also clear that the demonstration being proposed by AQD involves matters of regulatory significance.

The proposed exceptional events demonstration shows that the ozone episodes impacting multiple monitors were driven by plumes of smoke and ozone precursors from wildfires in Canada, Oregon, Idaho, and California traveling to and impacting the ambient air quality at those monitoring sites.

MOG notes that the proposed demonstration addresses such remaining factors as a narrative conceptual model describing the events as not reasonably controllable and not caused by human activity. The proposed demonstration includes a model illustrating that wildfire smoke led to many exceedances of the 2015 O₃ NAAQS at AQD and Federal monitoring stations, including a description of the wildfire events leading to the exceedances noted in the demonstration, a description of the timing of

² U.S. EPA, *Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations* (September 2016) at 4.

³ *Id.*

the exceptional events, and a reference to the EPA guidelines that were used to compute the 8-hour NAAQS.

The proposed demonstration also addresses the requirement to articulate a “clear causal relationship” between the measured exceedances of a national ambient air quality standard and the exceptional event. The proposed AQD demonstration includes a number of analyses to show a clear causal relationship between the wildfires and the specific events. The factors analyzed were weather maps and a synoptic description, GIS maps of AQD PM2.5 and exceeding ozone monitors, NOAA’s HMS smoke and fire maps, satellite imagery, AirNow surface level PM2.5 and ozone AQIs, four day time evolution of HMS fires and smoke, summary tables of monitor-days, seasonal variation of daily ozone, HYSPLIT back trajectories, and a comparison with historical concentrations as well as observations of wildfire smoke and the transport of this smoke on the exceedance days.

Finally, the proposed demonstration satisfies requirements related to notification of the public of the events and participation of the public in the submission of these requests.

The monitor and episode days that are carefully addressed in the proposed AQD demonstration are far from the only ones that have influenced air quality during those time frames. Many ozone monitors in the same area also observed 8-hour average ozone concentrations at significantly elevated levels on the same exclusion dates, as well as on days around these dates. Accordingly, MOG urges that as the USEPA approval process related to this request moves forward, USEPA should not only approve the AQD demonstration, but also assess the broader application of this request for application to other areas and to assure that other areas affected by these exceptional events are given the benefit of USEPA’s approval of these exceptional events in both nonattainment and attainment area regulatory matters

III. Conclusion

As mandated by the Clean Air Act, it is critical that Exceptional Events be excluded from consideration of air quality data. Doing so avoids penalizing states and sources from being subject to burdensome regulatory requirements driven by air quality data beyond their control and beyond the authority of the Clean Air Act.

MOG appreciates this opportunity to offer comments in support of the proposed exceptional events demonstration for the exceedances of the ozone NAAQS at these multiple monitoring sites due to these well documented exceptional

events. MOG urges AQD to finalize this demonstration for submittal to USEPA for approval as a fundamental mandate of the Clean Air Act.

Very truly yours,

A handwritten signature in blue ink that reads "Edward L. Kropp". The signature is written in a cursive style with a large, stylized "E" and "K".

Edward L. Kropp
Legal Counsel
Midwest Ozone Group