

BEFORE THE
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:)	
)	
THE TREATMENT OF DATA INFLUENCED BY EXCEPTIONAL EVENTS; PROPOSED RULE)	71 Fed. Reg. 12592 (March 10, 2006)
)	

COMMENTS OF THE COARSE PARTICLE COALITION

Introduction and Summary

The Coarse Particle Coalition submits the following comments on EPA’s proposed rule for treatment of exceptional events in determining attainment of national ambient air quality standards.¹ The Coalition comments may be summarized as follows:

Nationwide application. EPA should clarify that the final regulations will apply nationwide with respect to any final ambient air quality standards that EPA may adopt for coarse particulate matter (PM10-2.5).

Coarse PM demonstrations. Exceptional events demonstrations for coarse PM should remain relatively simple, as EPA has proposed. EPA should clarify in the final rule that coarse PM sources and emissions excluded from the final PM standard must be excluded from exceptional event demonstrations and are not subject to any resulting mitigation measures that may be imposed.

Air quality impacts. To ensure retention of the necessary case-specific flexibility while simultaneously encouraging national uniformity, EPA should adopt a hybrid approach under which: (1) all cases that meet the 95th percentile criterion are excluded (provided other applicable statutory criteria are satisfied); and (2) cases that fall short of that criterion are considered further on a case-by-case basis.

24-hour values. EPA should exclude a daily measured value in its entirety when it is attributable to an exceptional event, as EPA has proposed.

¹ The Coalition consists of the following organizations: National Stone, Sand and Gravel Association, Industrial Minerals Association-North America, American Forest and Paper Association, Portland Cement Association and the National Cotton Council.

State Schedules and Procedures. The Coalition recommends adoption of proposed option 2, under which exceptional events data would be flagged within 90 days after the end of the calendar quarter, and the state would then be given up to three years to develop exceptional events demonstrations. The Coalition recommends against adoption of any national minimum demonstration requirements, at least with respect to coarse PM, because the range of possible exceptional events is too great to allow for such specification.

Anthropogenic sources. The Coalition opposes inclusion of new emission control requirements in the exceptional events rule. High wind events should be excluded regardless of whether they include windblown dust from anthropogenic sources, provided the source is in compliance with existing control requirements. Mitigation measures should be limited to cases where the anthropogenic contribution is significant and existing control requirements have not been satisfied. Emissions of coarse PM that are excluded from the final coarse PM standard must be excluded from coarse PM mitigation plans, as EPA has proposed.

These points are discussed in detail below.

Nationwide Application

EPA's proposal finds "that exceptional events related to PM_{10-2.5} are relatively infrequent, occur predominantly in the western States and are overwhelmingly high wind events. Thus, with the exception of western areas, we do not anticipate that exceptional events will be a predominate factor in decisions made related to attainment or nonattainment determinations for the proposed PM_{10-2.5} standards" (71 Fed. Reg. 12602). The Coalition agrees that high wind events involving coarse PM may be expected to occur primarily in the west. However, there may be instances where qualifying events occur in other areas as well. The Coalition is concerned that this language in EPA's proposal could be construed to limit or discourage application of the exceptional events rules to coarse PM events in other areas. The final rules should clarify that while most coarse PM events are expected to occur in the west, the rules will be applied uniformly nationwide.

Coarse PM Demonstrations

Based on the evidence in the record, EPA anticipates “that demonstrations that ambient concentrations of PM_{10-2.5} have been affected by exceptional events will involve similar analytical steps to demonstrations for PM_{2.5} but will be simpler than demonstrations for PM_{2.5}. . . exceptional events demonstrations for PM_{10-2.5} will involve relatively straightforward showings that when high concentrations occurred at the affected monitors, concentrations at available rural monitors (e.g., IMPROVE network monitors) were also elevated and that meteorological conditions (i.e., wind speed and wind direction) were conducive to transport from upwind sources of re-entrained coarse particles” (71 Fed. Reg. 12602).

The Coalition agrees that the current evidence indicates that coarse PM demonstrations should be relatively simple, though EPA should clarify that corroborating evidence can be obtained from urban as well as rural monitors, and from any other valid sources. The Coalition also agrees that evidence from continuous monitoring systems, when available, will be useful for identifying short-term peaks caused by high wind events.

In the discussion of potential mitigation requirements, EPA notes that “in the case of the proposed NAAQS for PM_{10-2.5}, these options would not apply to sources which are proposed to be excluded from consideration, e.g., agriculture and mining activities . . . States would be expected to control emissions from contributing anthropogenic sources as appropriate under the definition of the proposed PM_{10-2.5} indicator” (71 Fed. Reg. 12603 n.10, 12605-06). EPA should clarify in the final rule that coarse PM emissions excluded from the final PM standard must be excluded from exceptional event determinations as well, and are not subject to any resulting mitigation measures that may be required.

Air Quality Impacts

EPA has proposed three options for determining when an exceptional event “affects air quality” within the meaning of the statute: (1) the 95th percentile criterion; (2) the 75th percentile/95th percentile tiered approach; and (3) a case-by-case approach based on the weight of the evidence. The Coalition urges EPA to adopt a combination of proposed options 1 and 3. A case-by-case approach would leave EPA maximum flexibility to consider site-specific conditions, but also is likely to result in disparate and conflicting decisions among the various EPA regions. While the 95th percentile criterion would help to ensure national uniformity, it would accept only 85% of the events that EPA has approved in the past. Regardless of which approach is adopted, Congress clearly did not intend for EPA to establish a more restrictive program in the wake of the SAFETEA-LU amendments to Section 119. This is discussed in the Conference Report, which explains that “these principles reflect the requirements of the current Clean Air Act and do not establish new requirements for States or EPA to meet.” 151 Cong. Rec. H7509 (July 28, 2005).

As EPA recognizes, the case-by-case approach “is most nearly analogous to our historical treatment of exceptional events” and “allows for consideration of days with ambient concentrations which are not necessarily among the highest concentrations that have been historically observed” (71 Fed. Reg. 12599). This approach gives the agency maximum flexibility to identify exceptional events on the basis of prevailing local conditions. This is particularly important for coarse PM emissions and ambient concentrations, which vary widely on a local and regional basis as recognized in EPA’s PM Criteria Document. To ensure retention of the necessary case-specific flexibility while simultaneously encouraging national uniformity, the Coalition recommends a combination of proposed options 1 and 3. Under this hybrid

approach, all cases that meet the 95th percentile criterion would be excluded as long as they meet the other applicable statutory criteria. Cases that fall short of this criterion would then be examined on a case-by-case basis.

24-Hour Values

EPA's proposal confirms that "EPA's historical practice has been to exclude a daily measured value in its entirety when that value is found to be largely caused by an exceptional event, and we are proposing to retain this approach in today's proposed rule . . . At present, we are not aware of the existence of adequate and universally applicable techniques that are administratively and technically feasible and that could support partial adjustment of air quality data except perhaps in limited cases . . ." (71 Fed. Reg. 12600-601). The Coalition agrees that such techniques are not currently available and therefore supports EPA's proposed approach.

State Schedules and Procedures

The Coalition recommends adoption of proposed option 2, under which exceptional events data would be flagged within 90 days after the end of the calendar quarter, and the state would then be given up to three years to develop exceptional events demonstrations. All exceptional events should be flagged, to ensure an accurate historical record, even if a given data point may not affect attainment designations. This is consistent with the statutory 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" (42 U.S.C. 7619(b)(3)(A)(v)).

In addition, states should have sufficient time to develop demonstrations as provided in proposed option 2. As EPA notes, "[t]he reason for providing more time under this option is that for most existing air quality standards, decisions regarding whether or not an area is attaining the applicable standard are based on the most recent 3 years of air quality data. Providing 3 years for

submission of demonstrations would provide States with an opportunity to evaluate whether the influence of one or more exceptional events will be relevant to determinations of attainment or nonattainment before undertaking the effort of preparing and submitting demonstrations” (71 Fed. Reg. 12600).

With respect to the content of state demonstrations, EPA asks for comment on "whether we should adopt a set of minimum demonstration requirements to ensure a reasonable degree of national consistency in approaches to demonstrating exceptional events, and if so, what elements should be included in the demonstration" (71 Fed. Reg. 12601). The Coalition recommends against adoption of any such requirements, at least with respect to coarse PM, because the range of possible exceptional events is too great to allow for such specification.

Anthropogenic Sources

Under the heading of “Special Treatment of Certain Events Under This Rule,” with respect to “ High Wind Events,” EPA states that “for the proposed 24-hour PM_{10-2.5} standard, we propose to exclude measured exceedances from consideration if it is demonstrated that high winds resulted in the transport of airborne particulate matter in concentrations that caused an exceedance or violation of the NAAQS. States would be expected to control emissions from contributing anthropogenic sources as appropriate under the definition of the proposed PM_{10-2.5} indicator” (71 Fed. Reg. 12605-06).

As discussed earlier in the proposal, the proposed mitigation options “would not apply to sources which are proposed to be excluded from consideration, e.g., agriculture and mining activities . . .” (71 Fed. Reg. 12603 n.10). The above quotation confirms that other emissions not covered by the coarse PM indicator would be excluded from mitigation plans as well.

In cases where these rules apply, high wind events should be excluded regardless of whether they include windblown dust from anthropogenic sources, provided the source is in compliance with existing control measures. As EPA notes, one of the statutory requirements for treatment as an exceptional event is that the emissions are “not reasonably controllable or preventable” (§ 319 (b)(1)(A)(ii)). The statute also excludes from exceptional events “air pollution relating to source noncompliance” (§ 319(b)(1)(B)(iii)). Accordingly, if a source is subject to reasonable control measures and is in compliance with them, the excess emissions are not “reasonably controllable or preventable” and additional mitigation measures cannot be required. This is confirmed in the legislative history of the 2005 Amendments to Section 319:

[E]vents which are part of natural ecological processes, which generate pollutants themselves that cannot be controlled, qualify as exceptional events . . . EPA is directed to follow principles in promulgating regulations under this section. These principles reflect the requirements of the current Clean Air Act and do not establish new requirements for States or EPA to meet.²

Mitigation measures should not be imposed automatically but should be limited to cases where the anthropogenic contribution is determined to be significant and reasonable control requirements have not been satisfied. Congress has indicated in Section 188(f) of the Act that anthropogenic PM emissions should be excluded if they “do not contribute significantly to the violation of” the PM standards. EPA’s proposal confirms that “over time, certain human activities may have had some impact on the conditions which later give rise to a “natural” air pollution event. However, we do not believe that small historical human contributions should preclude an event from being deemed “natural” (71 Fed. Reg. 12596).

² 151 Cong. Rec. H7509 (July 28, 2005)(describing conference legislation). In view of the 2005 amendments and legislative history, EPA can no longer apply the existing policy, which requires mitigation measures to reflect “best available control measures” (BACM). In addition, Clean Air Act Section 189 restricts BACM requirements to serious PM10 nonattainment areas. Thus, they are not applicable to other PM10 nonattainment or attainment areas, and would not be applicable to any areas under a new standard for coarse PM.

Similarly, the 2005 Amendments discussed above indicate that in cases where the contribution of anthropogenic sources is deemed to be significant and reasonable control measures are in place but have not been satisfied, mitigation measures should be limited to compliance with the applicable requirements. In cases where it is determined that the source is not subject to reasonable control measures, mitigation must be limited to such measures.

Conclusion

The Coarse Particle Coalition urges EPA to adopt final rules for exceptional events that are consistent with the following principles:

1. The final rule should apply to ambient coarse PM data nationwide.
2. Coarse PM demonstrations should remain relatively simple. Emissions excluded from the final coarse PM standard should be excluded from exceptional event demonstrations for coarse PM.
3. All cases that meet the 95th percentile criterion for air quality impact should be excluded, provided other applicable statutory criteria are satisfied. Cases that fall short of that criterion should be considered further on a case-by-case basis.
4. A daily measured value should be excluded in its entirety when it is attributable to an exceptional event.
5. Exceptional events data should be flagged within 90 days after the end of the calendar quarter, and the state should then be given up to three years to develop exceptional events demonstrations. National minimum demonstration requirements should not be adopted.
6. New emission control requirements should not be imposed by the exceptional events rule. High wind events should be excluded regardless of whether they include windblown dust from anthropogenic sources, provided the source is in compliance with existing control requirements.

Respectfully submitted,

Kurt E. Blase

Kurt E. Blase
J. Craig Potter
O'Connor & Hannan. L.L.P.
1666 K Street
Suite 500
Washington, D.C. 20006

(202) 887-1400

Counsel to the Coarse Particle Coalition

May 25, 2006