

JEFF FLAKE

ARIZONA

SR-413 RUSSELL SENATE OFFICE BUILDING
(202) 224-4521

COMMITTEE ON FOREIGN RELATIONS
COMMITTEE ON
ENERGY AND NATURAL RESOURCES
COMMITTEE ON THE JUDICIARY
COMMITTEE ON AGING

United States Senate

WASHINGTON, DC 20510-0305

STATE OFFICES:

2200 EAST CAMELBACK ROAD
SUITE 120
PHOENIX, AZ 85016
(602) 840-1891

6840 NORTH ORACLE ROAD
SUITE 150
TUCSON, AZ 85704
(520) 575-8633

February 3, 2016

The Honorable Gina McCarthy
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator McCarthy,

I am submitting a comment on the proposed rule revisions entitled "Treatment of Data Influenced by Exceptional Events" (Docket No. EPA-HQOAR- 2013-0572), commonly referred to as the "Exceptional Events Rule," and the associated draft guidance document referred to as "Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations" (Docket No. EPAHQ-OAR-2015-0229).

I am encouraged that some of the burdensome requirements related to filing an exceptional event demonstration have been reduced in the new proposed rule. Additionally, I am pleased that the proposal will facilitate a more effective and efficient process between the Environmental Protection Agency (EPA) and the states in an effort to improve the evaluation of an exceptional event, develop exceptional event documentation, and review the submitted information.

However, I believe that this proposed rule can and should go further to streamline the process. As the proposed rule recognizes, the current arbitrary, lengthy, cumbersome, and unpredictable approach to excluding air quality standard exceedances that are caused by natural events such as dust storms and wildfires is in desperate need of reform. The consequences of the current system are unnecessary costs and resources for local air regulatory agencies for exceptional events, which are not controllable.

To help solve this, I introduced the Commonsense Legislative Exceptional Events Reform Act of 2015" (S. 638) that contains specific reforms including a clear timeline to require the EPA to review states' exceptional events documentations. My bill states that the EPA must offer specific and publicly-disclosed criteria, developed with the states, on which exceptional events demonstrations will be evaluated. Exceptional event demonstrations should be made judicially appealable by state and local air quality agencies like other Clean Air Act regulatory requirements. Lastly, the EPA's decisions on exceptional event demonstrations should be based on the preponderance of the evidence and give substantial deference to the analysis and findings provided by the states.

I, like the Arizona Department of Environmental Quality (ADEQ), the Maricopa Association of Governments (MAG), as well as Maricopa County and Pinal County, believe that the proposed rule contains some improvements. However, there are clear areas where this rule adds to the burdens of states rather than reducing them.

Specifically, I would refer you to the Joint Technical Comments from ADEQ, MAG, Maricopa County and Pinal County in the following areas: Sufficiency of State Implementation Plan (SIP) Controls, Event Recurrence and Mitigation Plans, After Event Mitigation Controls, Wind Speed Threshold as Rule Requirement, Regulatory Significance, International Transport, Timelines for EPA Response and Action, and Wildfire Ozone Q/D (emissions/distance) Metric. I believe these comments offer the most pragmatic and commonsense solution to writing a workable rule and I urge you to take them into serious consideration.

There are several areas of the Joint Technical Comments that I would like to reinforce. Specifically regarding exceptional event recurrence, I echo the statement that the “recurrence of uncontrollable natural events should [not] have any bearing on the reasonableness of controls” and disagree with the EPA. Further, regarding after event mitigation controls, I like many of the air agency stakeholders in Arizona agree with the comments that “there should be no requirement for additional controls or mitigating measures, apart from those already required by the SIP, on surfaces that are covered by windblown dust as a result of an uncontrollable high wind dust event.” Additionally, I would ask the EPA to heed ADEQ, MAG, Maricopa County and Pinal County’s call to “revise the exceptional events rule to allow exclusion of exceedances caused or impacted by transported international emissions, thus preventing areas from being unnecessarily designated as a nonattainment area or remaining a nonattainment area.” Lastly, a troubling aspect of the proposed rule is the lack of reform to timelines for EPA’s response to exceptional event demonstration submittals and actions. As the comment states “there are no hard timelines in the proposed rule under which EPA must act on an exceptional event submittal or on an Initial Notification [...] States depend on prompt action so that appropriate planning can occur and so that areas are not held in perpetual non-attainment. With that in mind, EPA should set specific deadlines that encourage prompt action on submitted exceptional events.”

I believe this rule is well intended, however, I fear that it will add to the existing burden on Arizona and other state by adding more requirements, mitigating measures, or thresholds for filing exceptional events demonstration. These are events that cannot be prevented; however EPA still appears to be committed to punishing air agencies for their natural occurrence. It is my hope that we can come to a solution that recognizes this paradox and as such can reduce the arbitrary level of detail and paperwork required for filing an exceptional event demonstration. As the current process stands, it seems to simply sap state and local resources with little or no tangible benefit to public health.

Thank you for your consideration of these comments. I look forward to a final rule that addresses the concerns of stakeholders and state air agencies.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Jeff Flake', is positioned above the printed name and title.

JEFF FLAKE
United States Senator