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September 4, 2012

Air Docket
Attention Docket ID No. EPA-HQ-OAR-2011-0887
U.S. Environmental Protection Agency
Mail Code: 6102T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

RE: Comments on EPA's Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events; Docket ID No. EPA-HQ-OAR-2011-0887

About AGC

AGC is the leading trade association in the construction industry. It dates back to 1918, and it currently represents 33,000 firms in nearly 100 chapters across the United States. AGC's members include 7,500 of the nation's leading general contractors, nearly 12,500 specialty contractors and more than 13,000 material suppliers and service providers to the construction industry. These members engage in the construction of commercial buildings, hospitals and laboratories, schools, shopping centers, factories, warehouses, highways, bridges, tunnels, airports, levees, water works facilities and multi-family housing units, and they prepare sites and install the utilities necessary for housing development.

AGC members are directly impacted by the implementation of the EER and EPA's Draft Guidance. If an event is ruled an exceptional event, then a NAAQS exceedance caused by high winds, for example, would not be counted in determining whether to reclassify the attainment area as nonattainment. Additional nonattainment areas would result in additional requirements and restrictions on the business of construction. AGC is most concerned about the potential restriction on the use and operation of construction equipment that is currently out in the field, the loss of federal highway funding and the loss of economic development opportunities in urban areas. AGC and its members therefore have a great interest in the outcome of this proposed rulemaking.

The active phase of construction and the equipment used to perform this work is heavily regulated by both federal and state agencies to reduce particulate matter emissions. States with PM₁₀ non-attainment areas have fugitive dust regulations in place that apply directly to the construction industry. In many cases, construction firms must obtain permits and submit dust

- To establish an exceptional event, a state would need to show that the event caused a specific concentration, at a specific place. Doing so is difficult, for example, given the lack of particulate matter (PM) monitors and the high spatial variability of PM.
- Furthermore, in many rural areas, insufficient monitoring is available to demonstrate the “clear causal” relationships between an exceptional event and a measured exceedance even when simple visual observations would establish such a relationship.

EPA Should Implement “Specific, Broadly Applicable, Streamlining Mechanisms”

States face strict deadlines to make attainment determinations that could hinge on whether or not data affected by exceptional events are included or excluded. However, EPA is under no pressure to review this paperwork in a timely manner. The EPA review process as outlined in the Draft Guidance would provide for a total of 667 days of Agency review time once a demonstration package was submitted (presuming that such a package was considered to be “complete” by the Agency).² This timeline is far too long. AGC urges EPA to work with states

Docket ID No. EPA-HQ-OAR-2011-0887
AGC of America Comments
September 4, 2012

a state's exceptional-events documentation; (3) make EPA's decisions on exceptional events appealable; and (4) require EPA to make its decisions based on the evidence that states provide.

AGC appreciates the opportunity to comment. Thank you for taking our concerns into account. If you have any questions, please contact me at pilconisl@agc.org or (703) 837-5332.

Sincerely,

A handwritten signature in black ink that reads "Pilconis Leah". The signature is written in a cursive style and is positioned above a solid black horizontal line.

Leah F. Pilconis
Senior Environmental Advisor to AGC of America