



June 29, 2011

Ms. Gina McCarthy, Assistant Administrator

Office of Air and Radiation

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue N.W.

Washington, D.C. 20760

RE: Imperial County APCD Comments on Draft Exceptional Events
Guidance

Dear Ms. McCarthy,

I would like to start out by thanking you for your leadership and direction in efforts to address numerous local, state, and national concerns surrounding the interpretation and implementation of the Exceptional Events Rule. While this issue may not rise to the top of the administration priority list of concerns for this year, it certainly is one of our most pressing concerns that is in desperate need of clarity and definition as we move forward with our efforts to improve air quality in Imperial County. I do appreciate the opportunity to provide our input to EPA on the Draft Exceptional Events Guidance documents that were released for the first round of commenting on May 2, 2011.

Back on March 3, 2010, the Imperial County APCD submitted a response comment letter (see attached) regarding non-concurrence of Exceptional Events in Imperial County. In this letter I detailed our serious concerns and objections in terms of how EPA was interpreting and applying the Exceptional Events Rule in Imperial County. My concerns expressed then are still real and valid today, more than a year later, even after review of the draft guidance that was put out last month.

While I recognize and can certainly appreciate the amount of effort and resources EPA has put into reviewing the Exceptional Events Rule and its implementation during the last several months, I feel that the current draft guidance falls short of providing the necessary definitiveness, clarity, and streamlining that was at the crux of this review and subsequent guidance and/or rule revision.

First, I would like to share some of my overarching issues of concern; technical and specific comments from our initial review are in Attachment 2 of this letter. For the past couple of years, myself and other air agencies and organization officials have been asking that EPA move to bring us into the process of reviewing the rule so that we can partner with EPA to share our expertise and experiences in

implementing the rule that could prove beneficial and helpful in developing useful guidance, only to have been left out of those discussions and review until the 11th hour and only now are being brought into the process when EPA officially released the draft guidance in May and expects comments to be submitted within 60 days. This does not feel like a proactive partnership between our agencies to address a mutual air quality concern.

Imperial County APCD agrees wholeheartedly that there needs to be clarity, definitiveness, and streamlining efforts undertaken to ensure the Exceptional Events Rule is applied consistently and also to enable the planning agencies to fully understand what is required to be in a submittal package to get concurrence from EPA. The Exceptional Events Rule is an important and needed tool for air agencies in our planning efforts. While guidance can be helpful, the Imperial County APCD feels the appropriate mechanism to address the issues surrounding the rule is to work through the formal rule revision process. We believe the rule revision path is more effective in establishing clear regulatory language.

Imperial County APCD is adamant that there needs to be clear definitions throughout the rule and any potential guidance. Case in point, the heavily relied upon term of "reasonable" is used throughout the guidance document but it is not defined which is counter-productive to providing clarity. Much of the guidance seems open ended in nature leaving the assessment and implementation up to interpretation by EPA.

Imperial County APCD understands the rationale behind establishing a default 25 M.P.H. high wind threshold for determining the level of review and documentation necessary to make an exceptional event determination. However, it is very important that the 25 M.P.H not be the "bright" line as to what constitutes high wind events for all areas. Imperial County appreciates EPA's acknowledgement that alternative thresholds could be considered for individual areas with appropriate justification but the guidance does not establish what type and how much documentation would be required for EPA to approve an alternative threshold. Agreeing that this should be a case-by-case evaluation, appropriate guidance on how and what is required to establish a different threshold would save all agencies involved valuable time and resources if they understood what needed to be provided to EPA

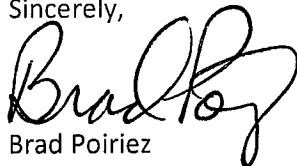
Currently in the draft guidance there is no mechanism by which agencies can challenge a determination by EPA on the non-concurrence of an Exceptional Event submittal. Imperial County APCD would prefer to work through the submittal process with EPA to address any issues that may arise before submittal, however there are times when both the air district and CARB believe they have fully established the required documentation required to show an Exceptional Event and EPA ultimately fails to agree. As it stands now, if EPA makes a finding of non-concurrence on a submittal, the only recourse left to the air districts is to wait until that finding impacts a formal action taken by EPA on a rule or State Implementation Plan (SIP), at which time the district can proceed with a legal action; this is exactly the position that Imperial County APCD finds itself in right now. In an effort to avoid spending precious resources and time on costly litigation processes, it would be more beneficial to EPA and the air districts and state air agencies if there were a mechanism by which to seek resolution of disagreement regarding non-concurrence on submittal packages for exclusions of data due to Exceptional Events.

Lastly, Imperial County APCD is extremely concerned with EPA's direction, which is at variance with the state's planning process for high wind events. Air Districts and states have to plan years ahead and set-up their strategies to protect the public during a high wind episode. The air districts and states have to develop, adopt, and approve RACM/BACM rules in efforts to meet state and national air quality standards and also do this in anticipation of high wind events. If EPA has concerns with RACM/BACM rules adopted and approved by the local air district board and which are further approved by the states, EPA should use the process of development of the rules to submit their potential deficiency comments to these rules.

The manner in which EPA proposes to evaluate RACM/BACM for high wind episodes in this draft guidance is not appropriate, nor productive. In this proposed draft guidance, EPA is evaluating rules in retrospect during which time it is highly unlikely that the local agencies and states would be able to resolve the issue by rule making. Instead, Imperial County APCD feels that EPA should not use the process of high wind episodes to contest RACM/BACM rules and concentrate only on the actual enforceability of these rules during the time of the event. If EPA finds deficiencies with the rules and determines that those rules need to be updated, EPA should work with the air districts and states by mutually agreeing on process and revision context of the rules to prevent any potential future impacts to the public. Imperial County APCD strongly opposes EPA's proposed language that basically conditions approvability and concurrence, or not, of high wind or other exceptional events on EPA-perceived deficiencies with the RACM/BACM rules due, in part, to lack of EPA's timely action on reviewing and approving said rules.

In Closing, I appreciate the opportunity to share some of our initial comments and concerns with EPA and do look forward to further review, comment, and discussion on any subsequent draft guidance and rule revisions (our recommended pathway) related to the Exceptional Events Rule.

Sincerely,



Brad Poiriez

Air Pollution Control Officer

cc: Imperial County Air Pollution Control District Board of Directors

California Air Pollution Control Officers Association

California Air Resources Board

Western States Air Resources Council

National Association of Clean Air Agencies

U.S. EPA Region IX

Attachment 1: March 3, 2010 letter from ICAPCD to EPA

Attachment 2: Details of Initial Analysis of May 2011 draft EER Guidance

ATTACHMENT 1

MARCH 3, 2010 LETTER FROM ICAPCD TO EPA



March 3, 2010

Jared Blumenfeld
Regional Administrator
U.S. Environmental Protection Agency (EPA), Region IX
75 Hawthorne Street
San Francisco, CA 94105-39001

SUBJECT: Response to the December 22, 2009 letter from the U.S. Environmental Protection Agency regarding the California Air Resources Board's Imperial County's Exceptional Events Request

Dear Mr. Blumenfeld:

The California Air Resources Board (ARB) submitted documentation of three exceptional events (September 2, 2006, April 12, 2007 and June 5, 2007) in May 2009 to the U.S. Environmental Protection Agency (EPA). In a December 22, 2009 letter (EPA Events Letter) from Laura Yoshii, Acting Regional Director of EPA Region IX to James Goldstene, ARB Executive Officer, EPA refused to concur with ARB's request to flag these exceedences as exceptional events. We have reviewed the EPA Events Letter and are greatly troubled by EPA's Interpretation of the Exceptional Event Rule (EER) and the technical information available for these days, both of which we believe are plainly inconsistent with existing regulations and guidance on exceptional event determinations. The implications of EPA's refusal to flag these data, if it is allowed to stand, are far-reaching and could adversely impact air quality planning and policy in Imperial County and throughout the southwestern United States. Our concerns and objections are presented in more detail in Attachment A. The key issues are summarized briefly below:

- We do not agree with EPA's interpretation of the Exceptional Event Rule (EER) or the conclusion that the flagged natural events somehow do not merit EPA's concurrence because of its desire to see certain control measures on anthropogenic sources improved. As discussed herein, EPA's objections that dust controls were insufficient or inadequate on the event days is tantamount to a conclusion that the events were reasonably controllable or preventable. That conclusion is completely unsupported by the available evidence. EPA has provided no evidence to refute the critical conclusion legally required under the EER - that the exceptional events (i.e., the combination of the high winds, the unusual levels of dust entrainment from nonanthropogenic and anthropogenic sources, and the resulting exceedences at the Imperial County monitors) were not reasonably controllable or preventable.
- In the EPA Events Letter, EPA takes the position that the requirement for an exceptional event to be "not reasonably controllable or preventable" inherently implies "a requirement that the state demonstrate that anthropogenic sources contributing to the exceedance caused by the event were reasonably controlled." This interpretation of the EER appears to be inconsistent with the language of 40 CFR §50.1(j), which defines an "exceptional event" as one caused by a natural event or non-recurring human activity and which is itself "not reasonably controllable or preventable." Under the legal

definition, it is *irrelevant* what controls are in place on the day of an otherwise qualifying event if it can be shown that such controls would not have reduced emissions enough to prevent an exceedance *anyway*.

- We also disagree with EPA's position that the EER justifies the use of Best Available Control Measures (BACM) as the "appropriate... level of control in evaluating whether reasonable controls are in place" in determining whether an event may qualify as exceptional under the EER. This interpretation is unsupported by the language of the EER and inconsistent with the intent of the EER. The purpose of the EER is to protect states from suffering the consequences of reclassification to a more serious designation as a result of "exceptional" events for which the normal planning and regulatory process established by the CAA is not appropriate. EPA's analysis of exceptional events should not depend on elements of the normal planning process, including the area's particular attainment status. In other words, the standards for determining an exceptional event in a serious nonattainment area should be no different than determining one in a moderate area or in an attainment area.
- We also object to EPA's incomplete and misleading characterization of fugitive dust controls in Imperial County. In the EPA Events letter, EPA implies that dust controls are not adequate because of concerns about fallowed lands and OHV-related contributions. On the contrary:
 - Farm lands produce significantly less emissions, taken as a whole or on a per-acre basis, compared to remote desert lands in the County due in part to ICAPCD's adoption of Rule 806, which requires a host of conservation management practices to prevent, reduce and mitigate PM emissions from agricultural sources.¹ Rule 806 was adopted in November 2005, years before the 2009 PM₁₀ SIP² was developed and adopted. That rule was modeled on the San Joaquin Valley Air Pollution Control District's Rule 4550, which was approved by EPA on May 26, 2004.³ EPA makes no mention of Rule 806 when discussing the County's agricultural controls.
 - Imperial County has been paving unpaved roads at great expense and despite hard economic times and record unemployment in the County; it began meeting its rule commitment starting in 2006.
 - Despite the fact that EPA has worked with ARB and ICAPCD for over a decade, including on the development of rules and BACM Technical Analysis beginning in 2004 and analysis of the exceptional events beginning in 2008, EPA never raised concerns about OHV-related contributions until *after* the Exceptional Events documents were submitted by ARB in May 2009 and after the draft PM₁₀ SIP was released in July 2009.⁴ The draft PM₁₀ SIP was revised to address those concerns. In any event, there is no basis for EPA's conclusion that OHV controls

¹ See Table 3.1 and Figure III.B.4 of the 2009 Imperial County PM₁₀ SIP.

² Imperial County 2009 PM₁₀ SIP, Final Draft, August 2009

³ 69 FR 30035, May 26, 2004

⁴ In addition, EPA did not raise these concerns while working with ARB and ICAPCD for over a year and a half on the Exceptional Events documentation or while working with ARB and ICAPCD for over two years on the development of the PM₁₀ SIP, or during the 30-day public comment period on the Exceptional Events documents (during which there were NO public comments submitted), or before the draft PM₁₀ SIP was released.

somehow would have prevented any of the exceedances attributable to the exceptional event days.

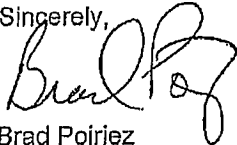
- EPA has misinterpreted technical information submitted by ARB and ICAPCD, which appears to have led to EPA's erroneous conclusions related to causality. ARB and ICAPCD carefully documented PM transport to show how such transport affected the September 2006 Westmorland and Calexico exceedances (see Sections 2.1.1 and 2.1.2 of Attachment A). As discussed further in the attachment, EPA's interpretation of the September 2006 exceedances is incorrect, and was not based on a sound technical understanding of the events associated with those exceedances.
- EPA's decision making regarding the level of evidence/documentation necessary to establish causality is not correct and is not consistent with the EER.
 - First, EPA's letter appears to set an impossible and legally unsupported standard for the evidence required to support the causality requirement of an exceptional event determination (i.e., to show a clear causal relationship between the exceedances and a qualifying event). EPA demands ever more detail about the exact sources of dust and wind transport as part of the exceptional events showing, yet has not clearly specified what level of detail (if any) would be sufficient to convince EPA that the exceptional events beyond the District's reasonable control were responsible for the measured exceedances.
 - Also, rather than considering the cumulative weight of the evidence showing that unpreventable exceptional events caused the exceedances at issue, EPA has chosen to evaluate each piece of supporting data separately and conclude that each separate piece *alone* does not support a causal relationship for the event. EPA has not considered the implications of this novel and troubling position regarding causality on SIP determinations and other regulatory processes.
 - For reasons that are detailed in Attachment A, we believe that the level of data, analyses, and documentation that would be required to meet EPA's apparent proof thresholds (i.e., to satisfy the causality and "but-for" requirements of the EER) here would exceed even the requirements for SIP planning itself. That is clearly inconsistent with the intent of the EER. The EER requires the weight of evidence to be taken as a whole, and rejecting flagged data is tantamount to a determination that "the exceedances were caused by recurring anthropogenic sources" (see 72 FR 13574). EPA cannot reject ARB's documentation of the exceptional events without producing such proof sufficient to overcome the great weight of the evidence to the contrary.

Based on the weight of available evidence and the established EER requirements and guidance, the events described in the ARB submittal clearly were exceptional events that ~~themselves were not reasonably controllable or preventable, and which directly led to the~~ measured exceedances. EPA has not demonstrated (and cannot demonstrate) that these exceedances were caused by anthropogenic sources and thus somehow appropriate for consideration in normal SIP planning.

Thus, we strongly urge EPA to reconsider its decision and concur with ARB's request to flag these exceedances as exceptional events, consistent with the intent and language of the EER. Failure to reverse this decision will not only result in a decision unsupported by the law or the

data, but also would create troubling precedent for both future exceptional event documentations and related SIP planning in the southwestern United States. Both results would be unacceptable, and could subject EPA to a challenge or other action.

Sincerely,



Brad Poiriez
Air Pollution Control Officer, ICAPCD

cc: ICAPCD Board of Directors
Gina McCarthy, Assistant Administrator for Air And Radiation, EPA Headquarters
Deborah Jordan, Air Division Director, EPA Region IX
James Goldstene, Executive Officer, ARB

ATTACHMENT 2

DETAILS OF INITIAL ANALYSIS OF MAY 2011 DRAFT EER GUIDANCE

Attachment 2: Details of Initial Analysis of EPA's "Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule", May 2, 2011 Document.

1. Not Reasonably Controllable or Preventable (nRCP)

Section 2.1, Definition of the "Event" for High Wind Dust Events

Throughout the guidance, EPA states that a high wind dust event includes both the high wind and the dust that the wind entrains and transports to a monitoring site; the event is not merely the occurrence of the high wind. In EPA's view, the "not reasonably controllable or preventable" clause in the statutory definition of an exceptional event applies to all types of events. In the case of a high wind event, EPA believes that this clause encompasses the reasonable controllability of the emissions entrained by the high wind. According to EPA, the fact that the high wind itself was not preventable does not by itself make the high wind event "not reasonably controllable or preventable."

We disagree with the position EPA has chosen to take in this guidance that the requirement for an exceptional event to be "not reasonably controllable or preventable" inherently implies "a requirement that the state demonstrate that anthropogenic sources contributing to the exceedance caused by the event were reasonably controlled." EPA's interpretation of the Exceptional Events Rule (EER) as somehow requiring a continuing review of local controls appears to be inconsistent with the language of 40 CFR §50.1(j), which defines an "exceptional event" as one caused by a natural event or non-recurring human activity and which is itself "not reasonably controllable or preventable." Under the legal definition, it is *irrelevant* what controls are in place on the day of an otherwise qualifying event if it can be shown that such controls would not have reduced emissions enough to prevent an exceedance *anyway*. The guidance to the final EER states that "not accepting a demonstration that exceedances are exceptional events is equivalent to a determination that the exceedances were caused by recurring anthropogenic sources."

It is inconsistent with the intent of the Clean Air Act (CAA) for EPA to refuse to concur in the flagging of an exceedance as caused by an exceptional event solely due to EPA's dissatisfaction with the stringency of other unrelated controls when such controls could not have prevented the exceedance anyway. The consequence of such an action would be to require a state to pursue control measures that are beyond State Implementation Plan (SIP) requirements, do not eliminate exceedances, and are likely the area's practicable abilities - a result the EER is specifically designed to avoid. Indeed, other specific exemption provisions are in place to prevent such difficulties (see "State Implementation Plans for Serious PM₁₀ Nonattainment Areas,"¹ Section V: "Waivers for Certain PM₁₀ Nonattainment Areas). As stated in that document (p. 42008), "if emissions from anthropogenic sources are reduced to the point that it is no longer technologically or economically feasible to reduce those emissions further, and the area still cannot attain the NAAQS, the EPA may consider waiving the serious area attainment date and appropriate serious area requirements."

¹ FR, Vol. 59, No. 157, August 16, 1994, p. 41998.

Section 3.1.2, Reasonableness of Controls in Place

In EPA's analysis of "reasonable" control measures, EPA makes a new requirement, as a starting point, that documentation of a high wind event includes an evaluation of in-place controls during the time of the event. EPA goes as far as stating that the Reasonably Available Control Measures (RACM)/Best Available Control Measures (BACM) lists may be a reference point, but not the sole means, by which EPA assesses the reasonableness of controls.

We are troubled with EPA's misunderstanding of the state's planning process for high wind events. States are required to plan years ahead of any actual wind event, ultimately setting up a strategy that protects the public during a high wind episode. The states have to develop and adopt RACM/BACM rules in anticipation of any high wind event. Should EPA have any issues with RACM/BACM rules as adopted by the states, EPA should and is required to use the rulemaking process during the development of the rules to submit comments and object formally to these rules. The manner in which EPA proposes to evaluate RACM/BACM for high wind episodes is not productive because EPA is evaluating rules in retrospect when states are unable to resolve issues by rule making; instead we propose that EPA not use the process of high wind episodes to contest RACM/BACM rules and concentrate only on the actual enforceability of these rules during the time of the event. Should EPA note a deficiency(s) with any of the rules, therefore creating a subsequent determination that the rule or rules need to be updated, EPA should in good faith work with the states to establish a timeline for updating the rules in order to prevent any impacts to the public. EPA should not keep states hostage and condition approvability of high wind events on deficiencies with RACM/BACM rules simply because of EPA's lack of timely action reviewing and approving these rules. The unintended consequences, including needless SIP-type control measure rule revisions and rule amendments that would only have a negligible effect, if any, on unhealthy air exposure, are particularly severe for areas with low-income and minority communities that are sparsely populated.

We are also troubled that this is a level of analysis which goes far beyond the requirements specified in the EER; specifically we are troubled with what documentation is needed for the necessary technical demonstration that a high wind event caused the exceedance. EPA has provided no justification for this requirement. Not only would this create a new standard for the demonstrations of exceptional events that is found nowhere in the language of the EER, it would be fundamentally inconsistent with the intent of the EER, which entails only "reasonable" control of anthropogenic sources and not that "best" control measures will be required. In this guidance, EPA has failed to provide a clear definition of the specific PM₁₀ control measures that can be considered "reasonable" or a clear procedure on how measures could be deemed "reasonable"; their interpretation is so open-ended, that it allows EPA to have sole discretion on how much control and information is needed.

The EER is clear that it is the State's responsibility to take reasonable and adequate actions to protect public health (72 Fed. Reg. 13576). According to the preamble, it is EPA's own belief that States are in a better position to make decisions concerning what actions should be taken to protect the public when an exceptional event occurs. Therefore, the implementation of RACM or BACM is not required for all sources to accept an event determination (as EPA would have it), because the State determines what controls should be in place before an event (including those it has determined in its SIP) and has the necessary flexibility to determine if, any or what, controls should be implemented following an event. Control measures satisfying the EER requirements are legally distinct from any RACM or BACM that may be required. Additional support for the distinction between RACM/BACM and "reasonable and adequate"

control measures under the EER is the fact that a state does not need to submit documentation of its mitigation actions to the EPA to allow for an exceptional event determination; this lack of required documentation stands in contrast to the documentation of control measures a state will be required to provide to the EPA under a RACM or BACM demonstration.

A RACM/BACM demonstration evaluation required in the guidance is not possible for newly reclassified states; the states will not be able to demonstrate RACM/BACM for a long period of time after reclassification to a more serious classification and therefore they will not be able to document wind events. Due to the lengthy process of developing and approving RACM/BACM rules into a SIP, newly reclassified states that are impacted by wind events and rely on EER to demonstrate attainment will not be able to demonstrate RACM/BACM application for several years after reclassification. This is a very important issue that cannot be ignored. As a result of EPA's disapproval of wind events because of issues about "reasonable" controls (or even delay in acting on the events), the states may be penalized by having to develop a PM₁₀ SIP using a design value based on a natural or exceptional event. This would require a higher level of PM₁₀ control than necessary for healthful air, appropriate and/or feasible.

By definition, exceptional events fall outside the normal planning process, and their analysis should not depend on elements of the normal planning process, including attainment or non-attainment designation status. By requiring BACM for all possible contributing sources of PM₁₀ in a "serious" PM₁₀ non-attainment area, this guidance goes beyond the CAA requirement to develop and implement BACM only for "significant" sources of PM₁₀ in the area. Further, this guidance leaves the door open for EPA to require reassessment of BACM outside of the established SIP process. As an example, in Table 2, point #7, Description of "Reasonableness" Factors, EPA states that there may be benefits to controlling even small anthropogenic sources. This implies that states will have to fully analyze insignificant sources when documenting wind events and EPA could require a SIP-like review and further rule restrictions outside of the formal SIP process. These requirements will have an enormous and detrimental economical impact, particularly to low-income and likely minority communities in areas like Imperial County, as well as creating additional burdens upon the states when documenting wind events.

Lastly, EPA's proposed interpretation of reasonable controls would stand the EER on its head. Rather than focusing on the ability or inability to reasonably control or prevent the exceptional event *itself*, EPA ignores the event and instead has the states justify the "reasonableness" of virtually all (i.e., non-*de minimis*) its anthropogenic controls, *whether they would have prevented the exceedance or not*. Even if this was the test, which it is not, EPA has not specified a criterion defining what level(s) make an anthropogenic source *de minimis*, or explained how the guidance even justifies the use of such a test. While we can appreciate that EPA can reserve the right to review exceptional events demonstrations on a case-by-case basis, by not defining a *de minimis* emission rate or ambient contribution to classify a source as "significant", EPA is basically requiring that *all* anthropogenic sources of windblown dust must be controlled, regardless of whether those controls would change public exposure or lead to healthful air. In any event, as noted above, any criterion for evaluating the reasonableness of local control measures should be independent of an area's attainment or non-attainment status, not require continual SIP-level review outside the SIP process of local controls, and be technically implementable.

Section 6.2.2.2, Calculate sustained wind speed

In addressing the nRCP requirement, EPA indicates that demonstration packages should include a calculation of the sustained wind speed during the event. The guidance document indicates that "[s]ustained wind speed data are typically available from sources such as local air

monitoring stations and National Weather Service Stations" (p. 34). However, these monitors are located in populated areas, not in the sparsely or non-populated deserts or other barren areas where the dust comes from in areas such as Imperial County. ICAPCD is concerned that the lack of monitors in such areas will make it difficult, if not infeasible, to provide the type of information that EPA now wants in a demonstration, thus increasing the likelihood of EPA rejecting what could be an otherwise acceptable exceptional event request. ICAPCD would like to know if EPA intends to pay for and install wind monitors throughout the desert in the Southwest, including in northern Mexico, in order for areas like Imperial County to have wind data information that EPA appears to have deemed necessary to approve an exceptional event submittal.

2. Clear Causal Relationship

Section 3.3, Clear Causal Relationship (CCR)

Technical Objections

In this section, EPA states that if sources of dust implicated by the CCR demonstration are unanalyzed or, in its opinion, not reasonably controlled, the nRCP should be re-evaluated.

Again, the ICAPCD would like to restate its disagreement with EPA's intention to use the EER to impose stricter RACM/BACM rules upon the states, particularly since this would be outside of the established SIP process. As stated earlier, states have to develop and adopt RACM/BACM rules in anticipation of any high wind event documentation. If EPA has any issues with RACM/BACM rules adopted by the states, EPA must use the SIP process for developing, commenting, and ultimately making formal adequacy decisions. The manner in which EPA proposes to evaluate RACM/BACM for high wind episodes is not productive because EPA is evaluating rules in retrospect when states are unable to resolve the issue by rule making.

The ICAPCD is concerned with the level of sophistication of the evidence required by EPA to demonstrate CCR for a high wind event. As a specific example, EPA's request to provide a comprehensive control analysis that includes back trajectories indicating specific sources in the upwind area, an inventory of the contribution for the significant sources, and detailed descriptions of controls and their effective implementation and enforcement is an unreasonable, possibly infeasible (due to lack of data and/or approved analysis protocols), and excessive requirement. In addition, the examples provided by EPA in this document as recommended CCR evidence are coming from SCAQMD and other large districts which already have the infrastructure and staff necessary to document and acquire these types of evidence in their generally urban and more densely populated areas. For local and rural districts with limited budgets and technical resources, collecting this type of information, including in sparsely populated desert areas and even areas outside of their jurisdiction, will be very difficult, expensive and likely technologically infeasible. Furthermore, similar to the lack of wind monitors in desert/barren areas, the use of satellite imagery may not be available in non-populated areas where much of the windblown dust is likely to be generated, and thus, an agency may not be able to provide in the breadth and quality of information that EPA appears to believe is a minimum requirement to make an affirmative decision on an exceptional event request. ICAPCD is concerned that its lack of ability to provide such satellite imagery will negatively impact EPA's decision to concur with otherwise acceptable exceptional event exclusion requests.

3. No Exceedance But For the Event (NEBF)

Section 6.2.7.1, Qualitative NEBF

Section 6.2.7.1 provides an example of a qualitative NEBF analysis, which may be adequate if non-event PM₁₀ concentrations are significantly below the NAAQS. The language in the example NEBF analysis is similar to the analysis of ICAPCD's April 12, 2007 high wind event², which was not accepted by EPA. ICAPCD's analysis indicated that PM₁₀ concentrations from anthropogenic sources were estimated to have been constant before, during, and after the event, similar to what is stated in the example NEBF analysis. Furthermore, ICAPCD's analysis includes bar charts (which are not included in the example analysis) showing the PM₁₀ concentrations at each of the PM₁₀ monitors before, during, and after the event, illustrating that the concentrations before and after the event were well below the NAAQS. Based on the example analysis provided in the guidance document, it is unclear what further analysis should have been conducted for ICAPCD's NEBF analysis to be approved.

4. Other Concerns

Based on the comments addressed above, ICAPCD is concerned that, while on the surface the guidance document appears to provide guidelines as to what evidence should be included in an acceptable exceptional event request, upon closer inspection the guidelines instead focus on the ways in which EPA can deny an exceptional event request, rather than approve one. For example, on page 13, EPA states, "Having BACM/RACM in place during the time of the event is an important consideration, but does not automatically qualify the controls as reasonable." This statement suggests that an area might not meet EPA's (erroneous) "not reasonably controllable or preventable" event requirement even if the area has adopted and is implementing BACM/RACM. In addition, throughout the document EPA maintains that events must be reviewed on a case-by-case basis. While ICAPCD does not deny that EPA can reserve some discretion to review requests on a case-by-case basis, the purpose of a guidance document is to provide examples of what analysis/documentation will generally be acceptable. The information included in the draft guidance does not provide any additional clarity as to what is acceptable compared to prior to the issuance of the draft guidance.

The guidance document also includes various examples of analyses that could be submitted to satisfy specific elements of an exceptional event request, such as the basic controls analysis found on page 32. However, these examples are for requests that do not appear to have been fully approved by EPA, as they are not currently listed on the EPA's Exceptional Events website; therefore, there is no guarantee that providing a similar type of analysis for a future exceptional event will be approved by EPA. ICAPCD would urge EPA to include only those examples of analyses that are part of approved exceptional events packages, in order to provide air agencies with a clear understanding of what will generally be considered an acceptable and approvable analysis (with the understanding that EPA reserves the right to review unusual circumstances on a case-by-case basis). Alternatively, EPA could generate its own example of an acceptable submittal based on a historical high wind episode using this guidance.

² Addendum, *Natural Event Documentation: Brawley and Westmorland, California, April 12, 2007*, March 12, 2009; pp. 33-35.