



August 31, 2012

Air and Radiation Docket and Information Center  
U.S. Environmental Protection Agency  
Mail Code 6102T  
1200 Pennsylvania Ave., NW  
Washington DC 20460

Attn: Docket ID No. EPA-HQ-OAR-2011-0887

Dear Sir or Madam:

The Western States Air Resources Council (WESTAR), an association of 15 western state air quality management agencies, is pleased to offer the following comments on the Environmental Protection Agency's (EPA) "Draft Guidance To Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events". WESTAR appreciates the effort EPA has made in preparing guidance to assist State and local agencies in the development of approvable exceptional events demonstrations. However, the draft guidance fails to address several fundamental issues we have raised over the years, as summarized below. Please note that the California Air Resources Board is submitting separate comments on its own behalf.

WESTAR previously commented on a preliminary draft of the subject guidance, highlighting four areas of particular concern: The level of effort needed to support an exceptional events request, including the need for a dispute resolution process; EPA's use of guidance to impose requirements on state and local agencies; The imposition of escalating emission control programs in areas subject to chronic exceptional events and; The requirement that state and local agencies show that, but for the event, there would not have been an exceedance or violation. With regard to this last issue, WESTAR reiterates its view that EPA should revise the exceptional events rule to either remove the "but for" test, or promulgate techniques that State and local agencies can use to adjust monitored data so as to remove the impact of an exceptional event.

#### Workload

WESTAR initially reached out to EPA regarding the need to streamline the demonstration process to lessen the burden on air agencies and to define uniform methods to determine the

impact of exceptional events on downwind concentrations, recognizing technical limitations and limited resources. We appreciate the effort EPA has made to address the challenges faced by State and local agencies in the implementation of the exceptional events rule, and fully support the goal of the guidance to allow air agencies to “better manage resources” given acknowledged limitations.

We think that the voluntary prospective controls analysis introduced in the June 2012 guidance has potential for significant process streamlining, both for states as well as EPA. However, a state that prepares a prospective controls analysis may not realize any benefits from such an effort if the scope of work to prepare the prospective controls analysis is not substantially less than the demonstration analysis. Other concerns include: 1.) changing circumstances, such as a controls analysis that is deemed out-of-date, causing the pre-approved analysis to be unusable as reference for the “Not Controllable or Preventable” demonstration; 2.) the review triggers a requirement to revise the prospective controls analysis.

In addition, while the draft guidance provides suggested methodology for an approvable technical demonstration, air agencies with limited resources or infrastructure will be hard pressed to submit a reasonable demonstration similar to examples cited in the guidance. For example, the sample apportionment analysis presented on page 46 of the guidance would require tremendous resource commitment for a local event and would be unattainable for a regional annual event that might occur in the desert southwest. In other places the guidance uses examples that many air agencies simply do not have the resources or technical expertise to replicate.

### Dispute Resolution

In previous comments on ways to streamline implementation of the exceptional events rule, WESTAR requested that EPA establish an administrative dispute resolution process to resolve disagreements over concurrence or approvals before a significant regulatory action is taken. The Q and A section of the draft guidance states that existing remedies are available, such as more communication with Regional Office staff, elevation to senior management, and reconsideration where errors are discovered. Inconsistencies between EPA Regional Offices in evaluating and acting on substantially similar exceptional events demonstrations have been and remain a concern - an aspect that the guidance is meant to address. While we appreciate the knowledge and abilities of Regional Office staff, we do not think the existing remedies suggested in the Q and A would be particularly effective. We reiterate our recommendation for EPA to develop an administrative dispute resolution process that could involve a third party with technical expertise.

### Guidance in Lieu of Rules

At several locations in the new guidance material, (e.g. the disclaimers in the guidance documents and Part 6 of the “Responses to First Round Significant Comments...”) EPA states that the purpose of the draft guidance is to assist states in complying with the exceptional events rule, and that the guidance documents do not change, increase, or decrease rule

requirements, and are not binding. We wholeheartedly agree. However, a number of western states have cited cases of Regional Office reviewers expecting strict adherence to the guidance, or requiring extensive additional analyses from the submitting agency to justify deviation from the guidance.

#### Not Reasonably Controllable or Preventable

WESTAR believes that the option for states to develop a prospective controls analysis is a step in the right direction. This would provide a positive mechanism to ensure that an assessment of reasonable controls does not need to be revisited with each individual event request. However, WESTAR remains concerned that the prospective controls analysis may still represent a significant workload for the states, as discussed in the workload paragraph above. In addition, it is not clear what EPA's expectations are for demonstrating the adequacy of existing state or local rules, or what the process would be for rule/program revisions suggested by EPA beyond those approved in SIPs. WESTAR is also concerned that there is a presumption by EPA that each recurring event suggests a need for increasingly more stringent controls on sources of windblown dust as a condition of concurrence. The frequency of chronically occurring natural windblown dust events in the west should not change the assessment of what constitutes reasonable controls for anthropogenic windblown dust sources.

#### The "No Exceedance But For" Demonstration

WESTAR reiterates its view that revisions to the exceptional events rule are needed to address issues related to the requirement that States demonstrate there would have been "no exceedance but for" the event (NEBF). The draft guidance includes a new recommendation that the NEBF demonstration should follow and build upon the technical demonstrations of the other required elements of the submittal, especially "Clear Causal Relationship." We agree that using these earlier analyses as the basis for the NEBF demonstration would streamline the process for *qualitative* NEBF assessments as well as for events occurring in urban areas with more extensive monitoring, as illustrated in the examples. However, the guidance is much less helpful where the event concentrations are close to the NAAQS, calling for *quantitative* NEBF analysis. Many states do not have the resources or the expertise to perform the types of refined and highly technical analyses suggested in the draft guidance. Accordingly, WESTAR believes that the NEBF test should be removed from the rule until EPA promulgates acceptable methodologies for quantifying event-caused concentrations, and examples are available.

There is a clear need to find an acceptable method or methods to quantify PM concentrations that are solely due to high wind events. We urge EPA to work with state and local agencies in a joint effort to develop commonly recognized default methodologies to separate exceedance concentrations due to high wind events from concentrations that would have occurred otherwise. By promulgating approved methods to determine event-caused contributions to downwind concentrations, the preparation of exceptional events requests by state and local agencies would be greatly simplified in most cases, as would EPA's review and approval of the request.

## Additional Comments

*Dust from Agriculture Sources:* The draft high winds guidance draws a distinction between BACM/RACM for non-agricultural sources and wind erosion best management practices (BMPs) developed by the U.S. Department of Agriculture's Natural Resources Conservation Service (NRCS) to prevent the loss of soil during high winds (p. 15 of the draft guidance). NRCS is just part of the larger agricultural community involved in the development and the implementation of wind erosion BMPs. This larger community includes the Agricultural Research Service, university researchers, the state conservation commission, conservation districts, the cooperative extension service, and farmers. EPA would benefit by using expertise available in the agricultural communities for addressing reasonable controls on agricultural lands. WESTAR urges EPA to collaborate with the agricultural community on the implementation of the Exceptional Events Rule.

*Wildfire Events:* While we understand that the primary focus of this draft guidance is dust from high wind events, there is an urgent need for EPA to work with State and local agencies on guidance for other types of exceptional events, most especially smoke impacts from fires. Likewise, we are eager to work with EPA on updates to the Interim Air Quality Policy on Wildland and Prescribed Fires.

If you have any questions or require further clarification of our comments, please contact WESTAR Executive Director Dan Johnson at 206-254-9145.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Remer".

Greg Remer, President  
Western States Air Resources Council