

December 8, 2015 Public Hearing Testimony

Proposed Exceptional Events Rule Revisions

My name is Dan Johnson. I am the Executive Director of the Western States Air Resources Council – known to most of you by our acronym: WESTAR. WESTAR is an organization of 15 western state air quality management agencies. Thank you for the opportunity to comment on this important rule.

The WESTAR Council strongly supports EPA's efforts to improve the effectiveness and efficiency of the exceptional events regulation and appreciate EPA's willingness to consult with the states on this important matter. Simply put, the purpose of the exceptional events rule is to ensure that a state is never required to develop a State Implementation Plan to address uncontrollable sources of air pollution. This is not to say that unhealthy air quality caused by exceptional events should be ignored. When air quality standards are violated, the air is unhealthy regardless of the source, and appropriate actions should be taken to mitigate public health impacts. The issue is not whether action should be taken - it should. The issue is whether the development of a State Implementation Plan is the best way to address uncontrollable sources of air pollution – and clearly it is not.

WESTAR supports EPA's proposed rule revisions that address many of our longstanding concerns. We welcome EPA's proposal to revise the exceptional events regulation rather than issuing more guidance that, to the implementing states, has the effect of rules. Several important rule changes are proposed including removal of the existing obligation to show that the exceptional event is associated with air quality concentrations in excess of historical fluctuation and the removal of the existing obligation to show that, but for the event there would not have been an air quality violation. We also support EPA's efforts to streamline the exceptional events process when the circumstances surrounding the event are clear, as EPA proposes in the draft wildfire guidance. Streamlining addresses our longstanding concern about the extraordinary commitment of resources needed by both states and EPA to prepare and approve an exceptional events request.

WESTAR is developing detailed written comments for submission to the docket for the proposed rule revisions. Today, I will discuss two key topics that are of particular interest to the western states.

The first topic is related to the “not reasonably controllable or preventable” section of the proposal. As a condition for approval of an exceptional event request, states are required to demonstrate, to EPA's satisfaction, that any control measures that could “reasonably” have been in place at the time of the event must have been in place, including escalating control measures in areas subject to recurring dust events and wildfire events. WESTAR supports EPA's proposal to consider relevant control measures included in recent non-attainment or maintenance SIPs as sufficient to meet this criterion. We believe that this same concept should apply in attainment areas as well. In an area that is currently in compliance with air quality standards except on days impacted by uncontrollable events,

EPA's proposal would require a state to implement some undefined set of emission control measures in anticipation of future uncontrollable events in order to be eligible to exclude the event-impacted data. While we agree that the implementation of measures that would materially provide public health protections against unhealthy levels of air pollution make sense, such as those measures outlined in Section VI of the preamble, states should not be required to guess what additional measures EPA would find acceptable to qualify as "reasonable" under the exceptional events rule. Instead, we reiterate our previous comment that if EPA believes a state's SIP is deficient, it is EPA's responsibility to clearly identify the deficiency and the measures they believe are necessary to provide for attainment and maintenance of the relevant air quality standard.

The second topic is related to the wildland fires section of the proposal. EPA is proposing a number of substantive changes to the exceptional events rule to address air quality impacts from fires. In particular, EPA is proposing rule language describing the circumstances under which air quality data effected by emissions from wildfires can be excluded from regulatory determinations. While we agree with the concept – that data affected by wildfires should be excluded from regulatory determinations – we have concerns about EPA's proposal to defer to the entity conducting some prescribed fires to declare that the fire is a wildfire, thereby making the resulting air quality impacts eligible for treatment as an exceptional event. We also have concerns about EPA's proposal to authorize fire managers, in lieu of air quality managers to exclude air quality data under the revised rule. Our written comments will elaborate on our concerns in this area.

Thank you for the opportunity to comment. I would be happy to clarify any of my remarks.