



South Coast Air Quality Management District

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VIA EMAIL: EEGuidanceComments@epa.gov

Matthew Lakin, PhD.
U.S. Environmental Protection Agency, Region IX
Air Division
75 Hawthorne St., AIR-7
San Francisco, CA 94105

Re: Draft Exceptional Events Guidance Document Comments

Dear Dr. Lakin:

The South Coast Air Quality Management District (AQMD) staff is pleased to provide comments regarding the U.S. Environmental Protection Agency (U.S. EPA) proposed *Draft Guidance on the Preparation of Demonstrations in Support of Requests to Exclude Ambient Air Quality Data Affected by High Winds under the Exceptional Events Rule*. AQMD staff has worked closely with U.S. EPA and has provided examples that are used in the draft guidance document. In addition, staff provided verbal comments at the Exceptional Events Draft Guidance Workshop held at U.S. EPA Region IX headquarters in San Francisco, on June 9, 2011. It should also be noted that AQMD staff also supports issues raised in the California Air Pollution Control Officers Association comment letter. It is acknowledged that this informal comment period represents the “first round” and that U.S. EPA will update the draft document after reviewing the comments received and release an updated version for additional comments. Per U.S. EPA’s schedule, the revised version of the draft document is expected to be released later this summer. AQMD staff offers the following comments and questions regarding the proposed guidance.

1. Streamlining

AQMD staff applauds the effort to develop a tiered approach where the stronger wind events (25 mph sustained threshold used in the guidance) may need less analysis and documentation than those that are not clear cut. The most obvious, extremely high wind events should require even less analysis and event documentation. Hopefully,

this will also result in quicker concurrence with the obvious events. For the most obvious high wind cases a checklist approach with key supporting data should be adequate. We hope to continue to work with you to streamline the process and the documentation.

AQMD staff greatly appreciates the efforts to provide guidance that will assist in both the preparation and the timely review of exceptional event documentation. It is our position that all data that qualifies for exclusion under the Exceptional Events Rule should be flagged so that the data is treated appropriately in regulatory decisions, progress demonstrations and strategic planning for air quality improvement. As such, all exceptional events documentation should be reviewed by U.S. EPA to consider concurrence, regardless of whether a pending regulatory decision hinges on that data. Inaction by U.S. EPA currently lapses to a non-concurrence with time. The proper treatment of data during exceptional events affects public perception of air quality and trends, as well as the use proper use of the data by researchers and air quality planners, with ramifications to planning of future control strategies and design values used for attainment demonstrations. Such considerations can extend beyond a simple view of pending regulatory decisions. Streamlining the event documentation, along with clear guidance as to what U.S. EPA will consider to concur with an exceptional event, will help everyone involved.

The idea of a High Wind Action Plan, that could identify a mutually agreeable set of reasonable controls for an area with recurring events, has merit. This would also help streamline the documentation for recurring events, since it could be used as a reference for background information. Unfortunately, this may not apply to initial or infrequent events or when new monitoring or unforeseen conditions change the types of sources that could impact a monitor. AQMD staff will continue to work with U.S. EPA to explore this option.

2. U.S. EPA's Discussion of "Reasonable Controls"

Contrary to U.S. EPA's interpretation, the Clean Air Act does not authorize U.S. EPA to require that anthropogenic sources of emissions be "reasonably controlled" in order to exclude a high wind event. Section 319(b)(1)(A) of the Clean Air Act defines the term "exceptional event" and includes the requirement that the event "is not reasonably controllable or preventable." Under the statute, the relevant criterion is whether the event itself is reasonably controllable, not whether the effects of the event could have been limited or controlled. There are two types of exceptional events: those caused by human activity that is unlikely to recur, and those cause by "natural events." While the degree of control on anthropogenic sources may be relevant to an exceptional event caused by human activity (e.g. a chemical spill), by the plain language of the statute it is not relevant to whether a natural event "is not reasonably controllable or preventable." In short, an agency cannot do anything to "control or prevent" the wind. U.S. EPA has attempted to address this concern by redefining the

term “event” to include both the high wind and the resulting dust emissions. This definition is illogical and convoluted. There is a clear difference between an event (high winds) and the results of the event (dust emissions). With respect to “natural events”, the relevant consideration under the statute is whether the event itself is controllable or preventable. The Clean Air Act may allow consideration of controls on anthropogenic sources in deciding whether an exceptional event due to human activity is controllable, but the wind event itself is not controllable.

Whether reasonable controls are applied to anthropogenic sources may be relevant to a separate provision of the Clean Air Act, but under that provision, U.S. EPA’s Exceptional Events Rule has already expressly decided that a demonstration of the degree of control will not be required. Therefore, to the extent the proposed Guidance would require a state to demonstrate that it has applied “reasonable controls” before excluding an exceptional event it violates the Exceptional Events Rule. U.S. EPA’s Exceptional Events regulation is authorized to consider several principles, including “the principle that each state must take necessary measures to safeguard public health, regardless of the source of the pollution.” CAA section 319(b)(3)(iv). Under this principle, U.S. EPA has already decided that it will not require states to control anthropogenic sources. In implementing this principle, the Exceptional Events Rule says that mitigation measures a state may take “may or may not include the implementation of control measures on contributing anthropogenic sources related to an event.” 72 Fed. Reg. 13560, 13576. (March 22, 2007). Thus, control of anthropogenic sources is not automatically required. Further, U.S. EPA said that “the implementation of RACM or BACM is not required...” (id.) Finally, U.S. EPA expressly ruled that it “will not be requiring States to submit documentation concerning the actions that it (sic) took to mitigate the impact of exceptional events, in order for U.S. EPA to exclude data from regulatory consideration.” U.S. EPA’s Proposed Guidance thus violates its own Exceptional Events Rule as well as the express terms of the Clean Air Act. This issue is currently being litigated in *Imperial County Air Pollution Control District v. USEPA*, Ninth Circuit Court of Appeals No.10-72709.

The term “reasonable” is used in terms of controls in relation to the “not reasonably controllable or preventable” discussion. As discussed above, U.S. EPA’s use of this phrase to require that the effects of the event, rather than the event itself, be reasonably controllable or preventable, is not authorized by the Clean Air Act or U.S. EPA’s Exceptional Events Rule. While we agree that effective controls should be in place to protect public health, which is our most important consideration, the cost versus benefit of controls play a role in determining what control measures are reasonable in a given area or situation. Additional clarification in the guidance and the language of the Exceptional Events Rule itself may help state and local agencies identify the wind-driven anthropogenic sources in the area and to assess what controls could be applied.

If U.S. EPA continues to take the position that anthropogenic sources must be reasonably controlled in order to exclude data, it must at least recognize that in some cases, even reasonable controls would not have prevented the exceedance. States must have the ability to make the case to U.S. EPA that those sources were reasonably controlled at the time of the exceedance and that the exceedance occurred despite the implementation of those controls, or that if the controls were not in place, they would not have prevented the exceedance in any case. The discussion of reasonable controls (Section 3.1.2) seems to indicate that agencies may only know the U.S. EPA's assessment of our control strategy for future events based on notice from U.S. EPA that U.S. EPA "considers controls on particular uncontrolled sources to be reasonable (e.g., as part of a previous exceptional event review)." Table 2 of the guidance provides some good insight into the thought process that U.S. EPA will use for determining the reasonableness of controls. The difficulty is in how to best assess the adequacy of controls for events without that history of U.S. EPA concurrence. Furthermore, additional clarification is needed on how source contributions that cross jurisdictional boundaries should be treated. One such example is particulates entrained from thunderstorms outflows over the deserts of northern Mexico or Arizona that affect measurements in California where the winds remain low. It is not completely clear what level of analysis is needed for such a transport case and whether a controls analysis is needed when anthropogenic sources are out of the air agency's jurisdiction.

While AQMD has one of the most comprehensive and highly effective control programs in the country, there is concern that a minor source that is not considered fully controlled in the U.S. EPA assessment could stall this process. Do all known anthropogenic sources in an area need to be controlled to the full extent possible for BACM to be considered to be in place? Additional discussion in the guidance will help submitting agencies determine if their controls should be adequate and will help provide consistency within U.S. EPA among the reviewers of exceptional event documents. To illustrate this concern, the example of reasonable agricultural controls is used. Can agricultural sources be adequately controlled with existing soil management practices (such as those from the U.S. Department of Agriculture's Natural Resources Conservation Service) or could stabilization of plowed or otherwise disturbed farmland be required, similar to what is often required of construction sites? Many would argue that such agricultural controls would be neither appropriate nor reasonable, for both economic and ecological reasons. Would air agency rulemaking to require best soil management practices on agricultural lands be needed in order to be able to consider agricultural source contributions to be reasonably controlled, or is soil management guidance adequate? Therefore, if U.S. EPA elects to incorporate "reasonable control" in spite of our comments, any use of the term "reasonable control" must be clearly defined.


3. Communication and Non-concurrence Appeals

AQMD believes it will benefit everyone if U.S. EPA encourages more interaction between the agencies submitting exceptional event documentation and the U.S. EPA reviewers and decisions makers. No submitted events should lapse into non-concurrence by inaction on U.S. EPA's part. No non-concurrence decision should be made by U.S. EPA without ample opportunity for discussion with the affected agency and opportunities to provide additional evidence or clarification. Communication through the process is critical. An appeals process for disagreement on non-concurrence decisions would be beneficial.

AQMD staff greatly appreciates U.S. EPA's effort to provide this guidance and your commitment to better address the problems associated with the Exceptional Event Rule as applied to high wind natural events. While improvements should also be addressed in the rule itself, the guidance should assist state/local/tribal agencies and U.S. EPA to make progress in the proper treatment of data affected by high wind exceptional events. U.S. EPA's effort to provide examples of approvable event documentation, both in the guidance and with a frequently updated web site, will help everyone with this process. AQMD staff is pleased to continue to work with U.S. EPA to develop and provide examples from our own event analyses.

Thank you for this initial opportunity to provide comments on the draft guidance. We look forward to continuing to work with U.S. EPA in implementing the Exceptional Events Rule.

Sincerely,



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Executive Officer

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