



**ARIZONA
ROCK
PRODUCTS
ASSOCIATION**



August 31, 2012

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

Re: Comments to the Exceptional Events Guidance Documents

To Whom It May Concern:

The Arizona Rock Products (ARPA) appreciates the opportunity to provide comments regarding the *Draft Guidance to implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events* released July 12, 2012. ARPA also supports the comments submitted by the Arizona Department of Environmental Quality dated June 30, 2011 and August 31, 2012. That said, the correct solution is a much needed overhaul of EPA's Exceptional Events Rule (EER) itself.

For well over 50 years, ARPA has been providing representation for over 45 member companies involved with the production of aggregates, asphaltic concrete, ready mix concrete, asphalt, lime products, and portland cement. Our members include over 51 associate members providing related transportation, contracting, and consulting services.

The Association and its members are committed to improving our air quality in the great State of Arizona and have invested millions in measures and compliance education to that end. We will continue to improve our production methods and employ the latest techniques and innovation. The industry has been and will continue to be an active stakeholder in the fight to address the health ramifications and potential crippling impact on our State's economy at a pivotal time. The implications of not resolving this issue will be devastating to the region regarding the mandatory sanctions clock and potential consequence on the region in terms of additional measures and regulatory uncertainty.

Recently, a bill was introduced in Congress that attempted to address key issues associated with exceptional events. The legislation attempted to resolve the challenges states like Arizona face by:

1. Encouraging deference to state expertise,
2. Reducing the paperwork burden on resource-constrained states,
3. Greatly minimizing the reporting necessary for inherently obvious localized natural events that are not attributed to anthropogenic sources,
4. Identifying firm time frames for EPA's review, and
5. Providing appeal rights.

We request that the Guidance be revised to reflect these key criteria. In sum, we are simply requesting regulatory certainty based on a defined set of criteria with reasonable timelines that will facilitate success, especially in light of Maricopa County's 5% Plan approval timeframe.

As a General Matter, Deference Must Be Granted to the States Regarding Exceptional Events

The Guidance must defer to local expertise and recognize unique local conditions. The variability of local meteorological conditions that often overwhelm the region's air quality monitors, but are not caused by anthropogenic sources, has become one of the state's largest air quality challenges. This includes localized events not associated with large scale dust storms as well as the amount of particulates that remain in the system after such an event.

The Clean Air Act is an "experiment in cooperative federalism" between EPA and the states, which bear the "primary responsibility" for implementation. *Luminant Generation Co. v. EPA*, 675 F.3d 917, 921 (5th Cir. 2012) (quoting cases). As *Luminant* and other several other recent court decisions have made clear, EPA is overstepping its allowable bounds regarding State authority on regulatory matters. The experience to date under the EER is that EPA is unnecessarily micromanaging state decision making regarding exceptional events. EPA should allow states to exercise their right to determine what is an exceptional event based on a transparent process, set criteria and clear guidance. Again, as long as the state is following clearly defined protocols, allow States their sovereignty that was intended under the Clean Air Act.

The Guidance Should be Revised to Reduce the Use of Limited State Resources

As a result of the July 2 and 8th exceptional events recorded in Maricopa County, the ADEQ spent 1000 man hours compiling data and preparing those submittals. ADEQ is currently paying a consultant \$500,000 in addition to the three FTE's necessary to prepare submittals for suspected exceptional events, which is really an attempt to restate the obvious given the meteorological data available. These funds could have been used for actual environmental benefit. Instead, the agency which has been cut by 30%, receives no money from the State General Fund and currently operates on vastly reduced Federal funding and fees, must expend much needed resources to prove obvious exceptional events that are not caused by anthropogenic sources. Additionally, streamlining attempts may have saved a few pages, but have not reduced the workload based on the enormous amount of data required to make these

showings. This is simply not sustainable! Exceptional events in Arizona have been a major burden on the state's limited resources.

Changes to Exceptional Event Policy must be made as Part of the Rule Rather than in Unenforceable Guidance for Consistency.

While the Association appreciates EPA's attempts to address the Exceptional Events Rule issues through guidance the Rule simply must be changed. Guidance is not enforceable and the rule should provide the necessary criteria relying on state input regarding how exceptional events will be properly evaluated by the state level and EPA should subsequently support those findings.

Firm Timeframes must be Established

EPA recognized in its first round responses to comment on the Exceptional Events Guidance that the agency would, "strive to review packages in less than 18 months, but the EPA's review of some demonstrations may take a full 18 months." This is unworkable. The approval of Maricopa County's recently submitted 5% Plan is hanging in the balance due to currently unapproved exceptional events demonstrations. If approvals of exceptional events submittals take longer than February of 2013, Maricopa County would not have the clean data showing necessary to continue to make progress despite the documented improvements in air quality. In fact, PM10 concentrations have been reduced by 40% in the last 20 years as population has continued to increase. The EPA simply must accelerate time frames for review and decisions regarding exceptional events or the results would prove devastating to the local economy. If EPA limited its role to that envisioned under the Clean Air Act framework, the review should take no longer than the 45 days necessary to review a Title V permit.

Opportunity for Proper Judicial Review

An appeal process should be established for exceptional events in order to act as a 3rd party referee between the state and EPA for all events in question. Making EPA decisions on exceptional events judicially reviewable is an essential component of the Guidance or Rule.

ARPA Concerns Regarding Specific Implications of the Most Recent Version of EPA's Revised Guidance for Exceptional Events:

1. Once again, the workload required to document exceptional events is unlikely to be less under the revised guidance; an approved *Prospective Controls Analysis* may help in regard to future events, but significant work is required to produce a *Prospective Controls Analysis*.
2. A High Wind Action Plan (HWAP) is unlikely to be of use, since EPA associates the plans primarily with newly-identified sources; However, EPA may require an HWAP if EPA identifies new sources or new "reasonable" controls.

3. According to EPA's response to comment, the region will need to develop a local high wind threshold. The high wind threshold is the minimum threshold wind speed capable of overwhelming reasonable controls on anthropogenic sources or causing emissions from natural undisturbed areas. The 25mph default is considered by EPA to be too high for Maricopa County. This will require more work and resources not currently available as EPA is suggesting that a high wind threshold, including wind tunnel tests, scientific literature, and monitoring data, be submitted separately along with the event demonstrations. Even if this could be completed by the submitting agency, the approvals would not be issued by the EPA in time to address the current 5% Plan deadline of February 2013.
4. EPA still maintains that it can require additional controls beyond RACM/BACM, or what may exist in the SIP and/or local rules if EPA determines additional controls are "reasonable" through their analysis of an exceptional event demonstration. This is unacceptable and unworkable. Defined, objective criteria must be established and followed. The Clean Air Act has defined RACM and BACM and this should not be left up to the changing discretion of the EPA.
5. The timeframe for EPA approval of demonstrations remains unchanged and according to the EPA, it will continue to take up to 18 months to review exceptional event submittals. This is the same amount of time a SIP normally takes to review. This is unacceptable and until this time frame is addressed or deference is given to the State DEQ our region will be set up to fail and Maricopa County will be out of compliance with its 5% Plan for PM10 as we only have until February of 2012 (6 months) to have our submittals approved. If EPA limits its review to that envisioned under the Clean Air Act and established objective, straightforward criteria for states to follow, there should not be a need for significant amount of time, effort, cost and agency resources. ARPA requests that determinations exceeding 90 days be deemed approved.
6. In EPA's response to initial comment on the Exceptional Events Guidance staff stated, "The EPA still maintains that the reasonableness of controls can depend on the number of days per year on which they will have an air quality benefit." This appears to be a moving target and suggests unclear, subjective criteria.
7. Intrastate transport requires an evaluation to identify whether neighboring county emissions are not reasonably controllable or preventable. This is unreasonable and unworkable in practice as the exceptional events that plague Maricopa County frequently begin hundreds of miles away.
8. The EPA is deferring a decision of whether to revise the Exceptional Events Rule. Because guidance is not enforceable, only a rule change can provide the regulatory certainty needed.

9. As stated before, there is no new dispute resolution process or appeals proposed in the guidance or as a possible rule revision. If EPA is confident in its determinations, it should welcome a process to defend these decisions from claims that they are arbitrary.

In Conclusion

The Arizona Rock Products Association once again appreciates the opportunity to comment on revisions to the *Draft Guidance to implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events*. Changes to the Guidance are important, but what is more important is the need for a proper and necessary rule revision in an expeditious manner.

Sincerely,

A handwritten signature in black ink, reading "Steve Trussell". The signature is written in a cursive, flowing style with a large initial "S".

Steve Trussell
Executive Director