



# Status of Exceptional Events Implementation Guidance

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**Disclaimer: Positions and views expressed here  
represent draft EPA guidance**

# Purpose



- Present draft Exceptional Events guidance products
  - Discuss key points
  - Get more detailed input through calls and written comments in the next 60 days
- Get your input on a broader review process for these documents

# Overview



- Planned Guidance Products
- Key Elements in the Draft Guidance
- Next Steps
- Feedback and Questions



# Planned Guidance Products

- **Draft Guidance Products Available Now**
  - Note to reviewers, including overview of draft guidance
  - 2 Attachments
    - Frequently asked questions (~ 30 pages)
    - High Winds Guidance Document (~60 pages)
  - Website <http://www.epa.gov/ttn/analysis/exeevents.htm>
- **Draft Guidance Products Under Development**
  - Guidance document on wildfire events and ozone
  - Replacement for EPA's Interim Fire Policy
    - Anticipate components to clarify treatment of agricultural burning and better define "basic smoke management practices"
    - Reconsidering the purpose of and approach to other sections, in light of interagency review comments

# Key Elements in the Draft Guidance



## 1. “Not reasonably controllable or preventable”

- When addressing event emissions, states must demonstrate that:
  - Reasonable controls were in place (e.g., anthropogenic dust sources) AND/OR
  - There are no controls that would have been reasonable to have in place (e.g., volcanic emissions)
- Additional considerations when determining whether reasonable controls were in place:
  - Burden vs. air quality benefit
  - Among other factors to consider, reasonableness needs to be judged in light of the technical information available to the state at the time the event occurred. EPA would expect for nonattainment areas to already have the technical information needed to reasonably control sources within their jurisdiction.
  - States not held accountable for emissions originating outside of their jurisdiction
  - Will need to defend that the controls in place were reasonable in individual cases
- For high wind dust events:
  - High Wind Guidance Document introduces a wind speed threshold to inform the “reasonableness” assessment for very high wind speed events
  - Exceedances at lower wind speeds will require additional justification because evidence may indicate uncontrolled sources or lack of implementation
  - Will need to explain appropriate wind speed in individual cases

## 2. “Exceptional” and “natural” events

- “Exceptional” does not necessarily mean “infrequent” for natural events

# Key Elements in the Draft Guidance



- 3. No exceedance or violation “but for” the event**
  - Continues to apply
  - Weight of evidence
  - Explanations of useful types of evidence
  - Examples of successful demonstrations
- 4. Events that do not satisfy “but for” can get special treatment for purposes of area classifications and/or SIP attainment demonstrations on a case-by-case basis**
- 5. “In excess of normal historical fluctuations, including background”**
  - We will treat this as a weight of evidence determination under the current rule
- 6. Clearer criteria for assessing high wind events**
  - No requirement to be infrequent, or to be above any wind speed floor, but must show “but for,” “clear causal relationship,” and “not reasonably controllable or preventable”
  - Wind speed threshold
    - Will need to explain appropriate wind speed in individual cases
  - Optional High Wind Action Plan, to avoid the “EPA will know it when they see it” problem
  - Provides examples of approvable demonstration components

# Key Elements in the Draft Guidance



## 7. Clear expectations and timeframe for administrative process

- Encourage states to submit a letter of intent within 12 months of event occurrence.
  - EPA will respond with whether/when EPA plans to act on the event.
  - EPA will generally give priority to demonstration packages that affect near-term regulatory decisions
  - EPA may defer review of demonstration packages that are not associated with near-term regulatory decisions
- Regions intend to respond within 120 days, including a target date for final action
- Window for adding to and/or revising the demonstration package
- Final action within 18 months if a regulatory decision hangs on the outcome

## 8. Transparency in EPA expectations and actions

- Guidance materials are detailed and clear
- Website with final EPA actions on submitted demonstrations

*Note: EPA anticipates following the draft guidance during the review period.*

# Next Steps



Date	Step
1-2 weeks	<ul style="list-style-type: none"><li>• EPA will distribute draft guidance documents via e-mail</li><li>• EPA will initiate more in-depth conference calls under WESTAR and NAACA sponsorship to orient reviewers and to respond to initial questions</li><li>• Tribal outreach</li></ul>
60 days	<ul style="list-style-type: none"><li>• Comment period for state/local/tribal agencies and FLMs</li><li>• Phone calls as needed</li><li>• May be able to provide the wildfire/ozon draft during this period</li></ul>
~June 30, 2011	<ul style="list-style-type: none"><li>• Comments due to EPA</li><li>• Respond to <a href="mailto:EEGuidanceComments@epa.gov">EEGuidanceComments@epa.gov</a></li></ul>
~July 31, 2011	<ul style="list-style-type: none"><li>• Next draft version(s) of guidance documents</li></ul>
60 days	<ul style="list-style-type: none"><li>• Broader outreach and comment process</li></ul>
November	<ul style="list-style-type: none"><li>• Finalize and distribute products</li><li>• Schedule rulemaking, if appropriate</li></ul>



# What About Rule Changes?



- Some issues of remaining potential concern may be resolvable by shaping the final guidance
- Possible advantages
  - Some future EPA approvals might be more legally secure in the case of litigation if the rule text were clarified
  - A rule amendment might allow a High Wind Action Plan to be a more definite “shield” for future events, with respect to the reasonable controls question
- Possible disadvantages
  - The current rule was controversial and any amendments likely will be too
  - Zero-sum work load situation for all of us

# Starting Questions for NACAA reviewers



- **With what other groups should we engage via meetings or conference calls to invite broad public comment?**
- **Is a 25 mph wind speed potential threshold reasonable and helpful? Do you have evidence to support another threshold value in your area/region?**
- **Is the concept of a voluntary, negotiated High Wind Action Plan to clarify expectations for “not reasonably controllable or preventable” an option that may be useful to you?**
- **Do you foresee implementation challenges if EPA issues guidance but does not issue a rule revision?**
- **Any missing important questions?**