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July 14, 2011

The Honorable Lisa P. Jackson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Jackson:

The Local Government Advisory Committee (LGAC) appreciates having the opportunity to work with you and the US EPA on a wide range of issues of interest and concern to local governments. More specifically, the Committee is particularly grateful to have the opportunity to comment on the pending review of Exceptional Events Rule (EER). Preceding EPA's issuance of the draft guidance, the LGAC previously discussed comments on the EER in a draft letter dated May 19, 2011 (see enclosed). The purpose of this letter is to follow-up with the concerns raised in the previous letter and to respond specifically to the draft guidance on implementing the EER that was recently released by EPA. The LGAC has carefully reviewed the draft guidance, and pursuant to its charter, the Committee would like to offer the following comments regarding the EER draft implementation guidance.

Namely, the Committee expresses the need for: 1) Clear guidance on determining what qualifies as an exceptional event and detailed requirements for a successful exceptional events package; 2) Reducing the regulatory burden on local governments, both in terms of time and of cost; and 3) Providing separate guidance documents for exceptional events related to wildfires, prescribed burning, and agricultural burning

Clear, Concise Guidance

The LGAC has identified a few of its primary concerns regarding EER. First, local governments lament the lack of clear guidance for submitting an exceptional events package. The Committee greatly

appreciates the development of a technical guidance document and clearer criteria for aiding the preparation of exceptional event demonstration packages, as well as the comprehensive frequently asked questions document. The Committee strongly encourages the release of these planned additional guidance documents.

The Committee recommends the implementation of default condition assumptions, for which an exception is automatically granted; the Committee appreciates that the draft guidance for high speed wind events establishes a wind speed threshold. The draft guidance is very helpful in laying out the components and requirements of a submitted package. This guidance, as well as the examples of approved packages available on the website, will assist local governments in submitting a complete package with all of the necessary components at once, rather than extending EPA's evaluation process through additional data requests. The Committee anticipates the release of additional guidance documents and best practice tools for exceptional event packages to help local governments better navigate the Exceptional Events process.

Reduce Regulatory Burden

Secondly, the EER process is burdensome for local governments. The amount of analysis required to meet the criteria for exceptional events requires local governments to expend tremendous amounts of time and money, a problem exacerbated by the pressures of today's economy. The Committee appreciates the establishment of a clear timeline for review in the draft guidance. However, the proposed deadline of 18 months for an EPA decision of a submitted package is rather long. Each complete package takes approximately 150 – 400 hours to review, and the Committee acknowledges that EPA has a large backlog of packages awaiting decisions. Consequently, the Committee recommends a timeline of six months to one year for an EPA decision on a completed package, and to substantially cut-back the EPA review time by establishing default criteria when, if documented, it is presumed it meets the Exceptional Event criteria (e.g., wind speed threshold). Additionally, the Committee appreciates EPA's intention to provide a faster decision on events that have a possible near-term regulatory action; the Committee recommends that EPA provide a decision on these events within six months or sooner.

The Committee looks forward to the implementation of a streamlined review process. While the clearer criteria and technical guidance documents reduce the uncertainty of the process for local governments, thereby reducing the time and expense required in preparing a package, the Committee would like EPA to recognize the remaining high expense of the process. In order to prove a "clear causal relationship," a requirement under EER, local jurisdictions in many cases must purchase their own Particulate Matter (PM) monitors to assist in documenting the required causal relationship.

Additional Guidance Needs

Furthermore, the Committee anticipates the issuance of additional guidance documents such as the High Winds supplementary guidance. Specifically, the Committee is interested in a forthcoming guidance document regarding wildfires, prescribed burning, and agricultural burning events. It would seem reasonable and necessary to address prescribed burning as a tool to improve air quality, or at least to lessen the harmful effects of wildfire on air quality. To fail to allow some type of exception for such an activity will, in the long run, actually be detrimental to long-term air quality in western forests and rural communities. The Committee looks forward to reviewing and providing comment on these upcoming documents. Additionally, with the pending reviews of the PM and 8-hour ozone standards, local governments are concerned that if the current standards are lowered, Exceptional Event demonstrations would become more important to keep an area in attainment status. The Committee anticipates additional guidance from EPA regarding this aspect.

The Committee appreciates the reforms the Agency is considering to streamline the Exceptional Events process and is grateful that EPA has addressed many of its concerns in the recent draft guidance for implementation of the EER. However, there are still outstanding issues for local governments that need attention, as outlined above, and the Committee believes there are likely more opportunities for EPA leadership to simplify and streamline the decision making process for the agency on matters that qualify as Exceptional Events. Specifically, as EPA continues to look at issues such as agricultural burning and prescribed burning, the Committee looks forward to providing comment on those separate guidance documents as they are proposed. The Committee understands that additional EER updates are forthcoming and looks forward to its continued work with the Agency on this effort.

Sincerely,



Mayor Heather McTeer Hudson
LGAC Chair Workgroup Chair



Supervisor Salud Carbajal
Air, Climate, & Energy

Enclosure