

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
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DEC 12 1995

Mr. Arthur J. Fossa, P.E.
Director, Division of Air Resources
New York State Department of
Environmental conservation
50 Wold Road
Albany, NY 12233-3250

Dear Mr. Fossa:

This is in response to your October 26, 1995 letter regarding the Environmental Protection Agency's (EPA's) revised policy with respect to the New Source Review (NSR) offset provisions in attainment, marginal and moderate ozone nonattainment areas in the Ozone Transport Region (OTR). This revised policy is contained in a September 12, 1995 letter from John Seitz, Director of EPA's office of Air Quality Planning and Standards to the Ozone Transport Commission (OTC), the Northeast States for Coordinated Air Use Management, and the Mid-Atlantic Regional Air Management Association.

We agree with part of your interpretation of the September 12, 1995 letter. With respect to the State of New York, a source locating anywhere in Upstate New York (outside of the New York City Severe nonattainment area) can secure offsets from anywhere else in the State, as long as the "Contributes to a Violation" test is met, under Section 173(c)(1)(B). In EPA's investigation of a more flexible interpretation of Section 173(c) with respect to the OTC's NO_x Emissions Budget Program, the September 12, 1995 guidance effects new policy on the "Equal or Higher in Nonattainment Classification" test, but does not effect new policy on the "Contribute to a Violation" test. Said another way, the "Contribution" test still applies throughout the OTR and the "Equal of Higher in Nonattainment classification" test still applies to areas designated serious and severe nonattainment for ozone in the OTR.

Through telephone conversations with Paul John of your staff on November 21 and 22, 1995, and December 4, 1995, we understand you are also concerned with the "Contribution" test requirement. EPA believes that States can allow emission reductions from ozone attainment and marginal nonattainment areas in the Ozone Transport Region to be used as NSR offsets in ozone nonattainment areas classified as moderate,

marginal or attainment, as long as the "Contribution" test is met. The September 12, 1995 guidance is supportive of trading under the NO_x Budget throughout the ozone Transport Region considering the aggregate impact of many trades on attainment demonstrations and rate-of-progress. The guidance indicates that the NSR "Contribution" test "might be addressed upfront," but this has yet to occur by the States. In the interim, a March 31, 1993 letter from Mr. Seitz to the OTC describes a two-day transport and 200 kilometer policy which could be generically applied.

Before Upstate New York can be treated as one trading area for NSR, a demonstration, similar to the examples in the NO_x Budget, should be made that sources trading in this area would meet the "Contribution" test. The State probably has the modeling information available to identify such area(s) for NO_x. To avoid a case-by-case determination during the permit review process, the State may want to consider an upfront demonstration and then reference the demonstration in subsequent permit reviews.

Lastly, although the September 12, 1995 policy was developed within the context of the Ozone Transport Commission's NO_x Budget Program, EPA believes the policy on the "Equal or Higher in Nonattainment Classification" test could also be applied to volatile organic compounds, but the State still needs to address the "Contribution" test, as noted above.

I hope this letter clarifies and confirms your interpretations. If you have any questions regarding this matter, please contact Mr. Kenneth Eng at (212) 637-4081.

Sincerely,

Conrad Simon, Director
Air and Waste Management Division