

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

OCT 11 1985

MEMORANDUM

SUBJECT: Acceptability of Emission Offsets

FROM: Robert D. Bauman, Chief Standards Implementation Branch, CPDD (MD-15)

TO: James T. Wilburn, Chief Air Management Branch, Region IV

This is in response to your March 1, 1985, memorandum in which you sought a Headquarters ruling concerning the Federal enforceability of emission offsets being allowed by a local agency in Region IV. Your specific concern is with the Federal enforceability of emission reduction credits whose enforcement involves use of a banking regulation (not yet approved by EPA) and the operating permits of the sources providing the emissions reductions. My response, which supports the interpretation that you have already made and discussed with that agency, is based on the information provided by your memorandum and by additional facts learned in subsequent telephone conversations between Roger Pfaff of your staff, Ralph Colleli of OGC, and Dan deRoeck of my staff.

As I understand the situation, neither the operating permit program nor the specific operating permits, or conditions to the permits in question, have been approved by EPA as part of the applicable SIPS. (Moreover, the conditions in the affected operating permits apparently are not identical to any Federally enforceable controls or limitations.) In keeping with EPA's past practice regarding Federal enforceability, the operating permits at issue would not be considered Federally enforceable.

The lack of Federal enforceability of the operating permits is reason in itself to preclude EPA's acceptance of the resulting emission offsets. However, you also asked for comment concerning which NSR rule would apply until the local agency's new Part D submission is approved. Since the agency has an EPA-approved Part D SIP already in effect, the NSR regulations contained in the currently-approved SIP would continue to apply until EPA approved the new submission. Appendix S would not apply since the agency has an approved Part D plan.

I hope that this fully responds to your request. If I can be of further assistance, please let me know.

cc: R. Biondi
R. Colleli
D. deRoeck
T. Helms
G. McCutchen
R. Pfaff
M. Trutna

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region IV - Atlanta, Georgia

DATE: March 11, 1985

SUBJECT: Acceptability of Emission Offsets

FROM: Chief, Air Management Branch

TO: Robert Bauman Chief, Standards Implementation Branch

In the FY-84 mid-year audit of a local air pollution control agency, Region IV identified a deficiency related to use of the Agency's banking regulation. The regulation allows sources to bank and trade emission reductions, and use the reductions as offsets in the Part D new source review program. The primary issue is federal enforceability of offsets. The agency allows inter-source trading of emission reduction credits. The only methods of enforcing some of the reductions leading to those credits are the banking regulation and the operating permits of the source providing the reductions. Region IV pointed out that the reductions are not federally enforceable because neither the banking regulation nor the operating permit program are part of the federally approved SIP. In discussing this issue with agency officials, Region IV agreed to request an official ruling from Headquarters on these decisions. Therefore, I am requesting that you provide a written response to the following questions:

- * If a condition in an operating permit requires a reduction in emissions, must that permit be submitted to EPA and approved as part of the SIP in order to be federally enforceable?
- * A SIP has a Part D NSR plan approved by EPA, which plan later needs to be revised according to the May 13, 1980, and August 7, 1980, EPA rule changes. Which regulation applies until the new Part D SIP is approved - Appendix S, the old Part D approved SIP or the new Part D SIP submitted but not yet approved?

Another point made by the agency was that they were being "singled out" while other agencies are following the same practice. We know this is not the case in Region IV, but the agency claims it is the case nationwide. In support of that claim the agency submitted the attached letter. According to a survey they conducted, four of eight permitting actions surveyed allowed offsets that were not federally enforceable. We have checked the information for the four sources in Region IV. Three of the sources were not subject to nonattainment review, so no offsets were required. The fourth used internal offsets which were made on condition of the new source construction permit. Based on that information it is apparent that the letter is inaccurate with respect to Region IV. However, we are enclosing it for your information.

James T. Wilburn

Attachment