

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
AIR, NOISE, AND RADIATION

DATE: April 14, 1980

SUBJECT: Federal Enforceability of Offsets in State Implementation Plan Programs

FROM: David G. Hawkins, Assistant Administrator for Air, Noise, and Radiation (ANR-443)

MEMO TO: Director, Air and Hazardous Materials Division, Regions I-X

Recently, issues have been raised in the Part D SIP revision review process addressing the relationship of offsets obtained under a Section 173 new source review program to the Federally enforceable SIP. The purpose of this memo is to reemphasize the Agency policy in regard to such offsets.

The basic premise of the Agency's policy is that where a SIP depends upon an offset program to attain and maintain ambient standards and to achieve reasonable further progress, the SIP must contain provisions to insure that the offsets are Federally enforceable. An internal emission offset will be considered enforceable if it is made a SIP requirement by inclusion as a condition of the new source permit. The emission offset will, therefore, be enforceable by EPA under Section 113 as an applicable SIP requirement and will be enforceable by private parties under Section 304 as an emission limitation.

An external emission offset will not be enforceable unless the affected source(s) providing the emission reductions is subject to a new SIP requirement by means of a SIP revision to insure that its emissions will be reduced by a specified amount in a specified time. Thus, if the source(s) providing the emission reduction does not obtain the necessary reduction, it will be in violation of a SIP requirement and subject to enforcement action by EPA, the State, and/or private parties. The form of the SIP revision may be a State or local regulation, operating permit decision, court or enforcement order, or any other mechanism available to the State that is enforceable under the Clean Air Act.

The manner in which compliance with this policy for internal and external offsets will be insured must be submitted with the Part D nonattainment plan in order for EPA to approve the State's plan. Preferably, this insurance should take the form of a provision within the State's new source review (Section 173) regulation requiring all offsets to be submitted as SIP revisions. As a minimum, however, this insurance should take the form of a written commitment in the SIP by the State that any offsets will be submitted as a SIP revision.

In those instances in which EPA has not yet taken final approval/disapproval action on the Part D SIP, the conditional approval mechanism should provide an excellent mechanism to require States to revise their SIPs to insure that offsets are submitted as SIP revisions. However, it has been brought to my attention that some 1979 SIP revisions may have been inadvertently approved without adequate provisions to insure the submittal of offsets as SIP revisions. Consequently, each of you should review your SIPs and, if you find no explicit provision to insure enforceability, should require the State to submit a revision correcting the noted deficiency.

In the latter case addressed above, it is necessary to issue a Notice of Deficiency allowing the State 60 days to take corrective action. The notice should further state that if the State fails to correct the deficiency, then EPA will proceed to promulgate the attached provision in the appropriate subpart of 40 CFR 52. The notice should add that the public will have an additional 30 days to comment on any material the State may submit, as well as on EPA's proposed provision. The effect of promulgation is to notify the State and other involved parties that in order for a new source permit to be considered valid, all offsets associated with the new source permit must be made legally enforceable through the SIP revision process.

Attachment

cc: Jeff Miller
Michele Beigel Corash

ATTACHMENT

The following language should be published in the approval status Section of 40 CFR 52 for all States which fail to include explicit provisions in their SIP to insure Federal enforceability of offsets.

New source review permits issued pursuant to Section 173 of the Clean Air Act will not be deemed valid by EPA unless the provisions of Section V of the emission offset interpretive rule published on January 16, 1979 (44 FR 3274) are met.