

JUL 8 1996

Mr. Peter F. Hess  
President, Joint Commission  
of Regulators & Business  
3232 Western Drive  
Cameron Park, California 95682

Dear Mr. Hess:

This is in response to your letter of May 14, 1996,, in which you present the California Air Pollution Control Officers Association Joint Committee of Regulators and Business (CAPCOA) concerns about a policy memorandum I sent to David Howekamp on August 26, 1994. In the August 1994 memorandum, the Environmental Protection Agency (EPA) requires that banked emission reduction credits (ERC's) be adjusted to reflect current State implementation plan requirements at the time of use.

In your letter, CAPCOA states that reasonably available control technology (RACT) adjusting of ERC's at time of use provides too much uncertainty for sources to voluntarily do early reductions through innovative technology, because EPA may eventually define RACT to be equal to the innovative technology. In the past, EPA has issued guidelines on what could be considered RACT, but, in recent years EPA has been, for the most part, leaving the determination of RACT to States' discretion. Therefore, EPA believes that if RACT is set in a way to discourage early reductions, the State is likely to be responding to particular air pollution problems present in its community.

The CAPCOA letter suggests that discounting for RACT at time of use is unfair to sources that voluntarily shut down or have otherwise reduced emissions because they did not know when the reduction occurred that it would be adjusted for RACT. Since existing sources need to reduce their emissions when new emission reduction requirements are adopted by a State, it seems equitable that emissions in a bank also be subject to emission reduction strategies. Air quality management is an iterative process. A State reduces some emissions and determines the effect on air quality. If the area continues to experience air quality problems, then the State must refine its attainment strategy to further reduce emissions. Therefore,, the use of ERC's that would either increase emissions above the current levels or lead to a shortfall in expected reductions could greatly reduce the effectiveness of a given attainment demonstration.

Finally, your letter states that it is unfair for owners of banked ERC's not to be able to sell or use them. However, please note that although ERCs are a limited authorization to emit, they are not and never have been an absolute property right. States have always had the ability to discount banked ERC's as needed for attainment purposes. Recent examples of this have occurred in the Los Angeles area. States must continue to retain this ability if they are to effectively manage the air resources in their community.

My August 26, 1994 policy memorandum recognized many of the concerns you and Region IX raised regarding this issue by offering several options in lieu of direct discounting of a particular project's ERC's at time of use. I encourage you to work creatively with EPA and State and local officials to explore any option which would address the concerns raised in your letter and the basic test which is outlined here and was explained more fully in the August 26, 1994 memorandum.

I appreciate this opportunity to be of service and trust that this information is helpful.

Sincerely,

(Original signed by Seitz)

John S. Seitz  
Director  
Office of Air Quality Planning  
and Standards

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