

Signed letter dated September 12, 1995

Mr. Bruce Carhart
Executive Director
Ozone Transport Commission
444 N. Capitol Street, N.W., Suite 604
Washington, D.C. 20001

Dear Mr. Carhart:

The purpose of this letter is to provide a formal response to your September 16, 1994 letter, which poses specific questions on interstate trading and new source review (NSR) under the nitrogen oxides (NOx) emissions budget concept. The Environmental Protection Agency (EPA) is very supportive of the efforts of the Ozone Transport Commission, the Northeast States for Coordinated Air Use Management, and the Mid-Atlantic Regional Air Management Association to develop a flexible and vigorous market-based NOx emissions budget program that will reduce regional ozone concentrations in a cost-effective manner. We believe there are no major impediments to the development of a budget program in the Ozone Transport Region (OTR) that satisfies enforcement issues and meets the requirements of State implementation plans (SIP). In developing this guidance on your specific questions, we have been working closely with your organizations over the last several months on these and other NOx budget issues. Our response to each of these issues is outlined below.

Geographical and Interstate Considerations

Your letter asks the EPA to identify any geographical limitations related to trading within the OTR, specifically related to interzone and interstate trading under a NOx budget. In general, such trading may be unconstrained in the majority of cases; nevertheless, it is important that trading programs contain appropriate safeguards to assure that SIP requirements continue to be met for reasonable further progress (RFP) and/or attainment and maintenance plans during implementation of the trading program. In addition, appropriate provisions must be adopted for enforcement of interstate trading.

Trades could impact RFP requirements in serious and severe ozone nonattainment areas which choose to meet RFP through NOx substitution. However, the NOx RFP requirement might be met through implementation of the September 27, 1994 NOx Memorandum

of Understanding (MOU) which calls for substantial NOx reductions. That is, in many areas the RFP portion of NOx reductions might be small compared to the overall NOx reductions from stationary sources in the nonattainment area.

The EPA views trades in areas with attainment or maintenance plans which include a regional strategy (such as the NOx MOU), as generally consistent with the regional concept in the SIP. However, the EPA is concerned that the cumulative effect of trades over the long term could create a situation that was not possible to foresee at the start of the trading program but needs correction. Therefore, the SIP trading program should include commitments for tracking of changes in the NOx emissions and, as needed, remodeling and revision of the SIP.

In evaluating the effect of trades on the attainment or maintenance plans, the EPA will place greatest emphasis on the overall effect of all trades, rather than examination of individual trades. Our initial analysis of this issue (August 1995 draft report by ICF Resources) is encouraging in this respect. It appears that broad geographic constraints on trading within the OTR, such as interzone limitations, may not be needed. In some cases, however, States might have information concerning the effects of NOx reductions in specific local areas. In such cases, States might choose to include in their trading program specific provisions governing NOx trades in those areas.

To assure an equitable and enforceable program, an interstate trading program needs a regional mechanism for the tracking of trades in order to avoid any double counting of emission reductions. Further, interstate trading should generally be founded upon SIP trading rules that are substantively identical so that an emission credit in one State is creditable in another State.

New Source Review Considerations

Regarding the NSR offset requirement for major new and modified stationary sources, the EPA's general policy is that credits for emissions reductions generated by stationary, mobile, or area sources may be used so long as they meet the offset provisions of section 173 of the Act and the EPA's NSR regulations. Where possible under section 173(c), the EPA intends that States have the flexibility to design market based programs that include provisions for NSR offsets. The specific provisions of section 173(c) could be built into a market based approach. For example, the "contribute to a violation of the national ambient air quality standard" provision of section 173(c)(1)(B) might be addressed upfront in the plan by specifying specific areas or zones in the plan area from which offsets could be obtained.

The EPA has decided to take a more flexible interpretation of section 173(c) as applied in the ozone attainment areas in the OTR than the initial position in our letter to you dated March 31, 1993. Section 184(b)(2) requires that new or modified major sources locating in ozone attainment areas in the OTR must meet the same NSR requirements as if the source were locating in a Moderate ozone nonattainment area. For the OTR, the EPA believes that States have the flexibility to allow emissions reductions from ozone attainment areas in the OTR to be used as NSR offsets in ozone nonattainment areas classified as Moderate (or below), so long as the contributions test of section 173(c)(1)(B) is met. Also, the equal or higher classification" provisions of section 173(c)(1)(A) still apply.

Furthermore, the EPA understands that under consideration in the NOx Budget proposal is a "seasonal" budget program for the 5-month ozone season. The EPA is willing to discuss further the details of a program that allows emissions reductions below seasonal budget allocations as NSR offsets provided there is periodic reconciliation by the State(s) that the total increased emissions from new or modified sources in the budget area is sufficiently offset by actual emissions at the proper offset ratio.

Our collaborative efforts are clearly helping to develop a NOx trading program that will provide a significant step toward attainment of the ozone standard in a cost-effective manner. I look forward to continuing to work with you and your staff on this and other programs in the consultative phase of the ozone attainment efforts.

Sincerely,

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

Identical letters were sent to:

Mr. Jason Grumet
Northeast States for Coordinated
Air Use Management
129 Portland Street, Suite 501
Boston, Massachusetts 02114

Mr. James Hambricht
Mid-Atlantic Regional Air
Management Association
15 Pine Street
Harrisburg, Pennsylvania 17101