

annual equivalency demonstration program is contained in CAA section 173(a)(1)(A)'s mandate that new and modified stationary sources seeking to commence operating in a nonattainment area must be required by the state permitting program to obtain sufficient offsetting emission reductions ("offsets") such that "the total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources \* \* \* so as to represent reasonable further progress \* \* \*." This statutory focus on total regional emissions supports the approval of a District offset program that ensures equivalency with the federal NSR offset requirements on an annual aggregate basis. EPA is also working with other California Districts to help them craft approvable annual equivalency demonstration programs.<sup>2</sup>

The goal of the District's offset equivalency tracking system and annual reports, therefore, is to show that the District's rules are requiring appropriately discounted<sup>3</sup> ERCs that are, in the aggregate, equivalent to the credits that would be required under the federal major source NSR offset requirements. To show equivalency, pursuant to District Rule 26.11, the District intends to rely upon ERCs used in minor source permitting actions<sup>4</sup> to make up for any loss in the creditable amount of ERCs provided by a permit applicant for major source NSR permits due to surplus adjustment.

To ensure appropriate District implementation and EPA oversight of

is appropriate to focus the surplus discussion on ERCs.

<sup>2</sup> For example, on February 13, 2003, EPA proposed to approve San Joaquin Valley Air Pollution Control District's NSR program, which includes an annual equivalency demonstration. 68 FR 7330. On September 18, 2000, EPA also published a proposed limited approval and limited disapproval for a NSR program that would allow an annual equivalency demonstration program for the Bay Area Air Quality Management District. 65 FR 56284. On December 4, 1996, EPA approved South Coast Air Quality Management District NSR rule revisions based in part on the District's commitment to implement a tracking system to show that in the aggregate it will provide for the offsets required by the CAA. 61 FR 64291.

<sup>3</sup> The words "discount" and "adjust" are used synonymously in this action, and generally refer to a reduction of an ERC by the portion of the original emission reduction that is no longer surplus.

<sup>4</sup> Though the CAA requires that permitting authorities, including local air districts, have minor source permitting programs, it does not require that minor sources obtain offsets. As such, ERCs used to offset new emissions from minor sources may be available for use in the annual equivalency demonstration if the District can demonstrate that the emission reductions underlying the ERCs are surplus to all other requirements of the Act, and are otherwise creditable for federal purposes.

the annual equivalency program, the District and EPA entered into a memorandum of understanding ("MOU") on February 18, 2003 describing in detail how the District will implement the annual equivalency program. Generally, the MOU sets forth the records to be maintained by the District, the information the District must include in each annual report submitted to EPA, and the necessary surplus analysis to be performed by the District at the time of permitting. The MOU also describes the proper use of the hammer provision, District Rule 26.11.C.6., which requires that the District discontinue the use of the equivalency program once an annual report demonstrates a deficit of creditable ERCs compared to the amount of reductions necessary to offset emissions for new or modified major NSR sources. As of the time the report demonstrates a deficit, the District rules require that sources provide enough surplus-adjusted ERCs to cover any required NSR offsets at the time of permitting. A copy of the MOU is in the Docket and is available to the public from the Region IX contact listed in this notice.

## II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties:

- CARB;<sup>5</sup>
- California Council for Environment and Economic Benefit ("CCEEB");
- The District; and
- Pillsbury Winthrop on behalf of Western States Petroleum Association ("WSPA").

The commentors generally supported our action to approve the District rules into the SIP and the creation of the annual equivalency demonstration program. The majority of substantive comments focused on our interpretation of what emission reductions are considered non-surplus under Section 173(c)(2). This interpretation is important since the NSR District rules being approved closely track the language of section 173(c)(2), which explicitly excludes emission reductions that are "otherwise required by" the CAA from use as an NSR offset. As section 173(c)(2) does not specifically delineate the type of requirements included within its scope, EPA's

interpretation of the application of the provision is very important for proper implementation of the NSR program.

In our proposed approval, we described six categories of emission reductions that we consider non-surplus for NSR offset purposes. Emission reductions falling under any of these categories are therefore not available for use as NSR offsets, whether directly in a permitting action or through their use in an annual equivalency demonstration. In response to comments received on the proposed approval and after further consideration, we are slightly revising item numbers 2 and 5 to be more consistent with the CAA.<sup>6</sup> Since this list of non-surplus reductions is only EPA's interpretation of section 173(c)(2) and District Rule 26.1.28.b. and does not require any change to the District's rules being approved today, the revision of the list does not affect the approvability of the District's rules. Moreover, the finalized list has been incorporated into the MOU between the District and EPA, which further ensures that the annual equivalency demonstration program, including surplus adjustment of ERCs, will be properly implemented.

The following is the revised and final list of what we consider to be non-surplus emission reduction categories:

(1) Any emission reduction required by a stand-alone federal requirement or regulation, including, but not limited to, Acid Rain, New Source Performance Standard, Reasonably Available Control Technology, and Maximum Achievable Control Technology, whether or not the requirements are part of the State Implementation Plan ("SIP") or a local attainment plan.

(2) Any emission reduction relied upon by a permitting authority for attainment purposes, or contained in an approved attainment plan, including emission reductions relied upon for Reasonable Further Progress calculations. Reference 51.165(a)(3)(ii)(G).

(3) Any emission reduction whose original emission is not included in the District's emission inventory. Reference 51.165(a)(3)(ii)(C)(1).

(4) Any emission reduction based on a source-specific or source category-specific SIP provision used to comply with CAA requirements.

<sup>6</sup> The changes to item number 5 is discussed in the response to comment number 4. The change in item number 2 was the addition of the language "or contained in an approved attainment plan." Though EPA received no comments on this item, we included this language to ensure that *any* and *all* reductions relied upon or required for attainment purposes be considered non-surplus, whether or not the reduction is explicitly set forth in an attainment plan.

<sup>5</sup> Since CARB only stated its general opinion regarding annual equivalency programs and did not provide any specific comments for this action that required a response, none of CARB's comments have been addressed in this Public Comments and EPA Responses section.