

(5) Any emission reduction required by a condition of a permit issued to comply with CAA new source review requirements. Any emission reduction required by a permit condition placed on a permit solely: 1) to make the reduction federally enforceable to meet federal creditability criteria for use of the reduction as an offset for new source review purposes, or 2) to assure compliance with a state or local requirement that is not federally enforceable shall not be included in this class. Reference 51.165(a)(3)(ii)(G).

(6) Any emission reduction based on a source-specific emission limitation resulting from an Environmental Protection Agency enforcement case.

The specific comments and EPA responses are summarized below:

*Comment 1:* CCEEB commented that "Section 173(c)(2) \* \* \* does not provide that banked emission reductions, which were not required when banked, must be adjusted again to reflect later-adopted emission reduction requirements. Further, EPA has not promulgated any regulation to require such discounting." WSPA provided an almost identical comment.

*Response 1:* We disagree with CCEEB's and WSPA's comments. The requirement for discounting at the time of use derives from the statutory requirement that emission reductions be surplus of CAA requirements. CAA section 173(c)(2). In a 1994 memorandum, EPA set forth its policy that banked ERCs used as NSR offsets must be adjusted at the time of permit issuance to ensure that they are surplus as required by section 173(c)(2). Memo from John S. Seitz, Dir., OAQPS to David Howekamp, Dir., Region IX Air and Toxics Div. (Aug. 26, 1994) ("1994 Seitz Memo"). This is important to ensure that emission reductions are not "double-counted" for CAA purposes, something prohibited by the CAA. Double counting can occur where emission reductions are the result of, or would have been achieved by, controls expressly required by the Act or controls used to satisfy requirements of the Act. For example, a source may voluntarily reduce its emission of hazardous air pollutants ("HAPs") and bank those credits at the time of reduction. Some time after these reductions are achieved, EPA promulgates a Maximum Achievable Control Technology ("MACT") standard that applies to the source. Though these credits may be permanent, real, quantifiable, and enforceable, the promulgation of the new MACT standard would render the portion of the banked ERC that would have been required by the new MACT standard

unavailable for NSR offset purposes because it is no longer in excess of requirements under the Act. This is important since many HAPs are also considered volatile organic compounds ("VOCs"). Without a requirement to discount ERCs at the time of use, sources could be relying upon emission reductions that were otherwise required by the CAA. Moreover, the SIP may take credit for the reductions achieved by this MACT rule, raising the further possibility that the reductions would be double-counted for attainment purposes if not surplus adjusted at the time of use.

More than just preventing possible double counting, however, adjusting at the time of use is important to generally ensure proper implementation of the NSR program. The CAA does not require or provide for ERC banking programs, which means that there are no federal requirements ensuring the quality of banks or banked credits for federal offset purposes. Because of this, a surplus at the time of use analysis and appropriate adjustment provides an important first and only review of the proposed ERC's consistency with NSR CAA offset requirements. Without such a review, EPA could not assure that sources were complying with NSR offset requirements of the CAA since most ERCs were banked without EPA review and many without supporting documentation or information.

Despite the necessity for surplus adjustment at the time of use, EPA has worked with the District to create a system where sources may be able to rely on banked ERCs while at the same time maintaining the integrity and legality of the District's NSR program. Through the use of the annual equivalency demonstration program, EPA is allowing the District to give full credit to ERCs provided by major sources for NSR permitting activities as long as the District can identify other retired or used creditable emission reductions that make up for the difference within the year accounting period.

*Comment 2:* Item number 3 in the list of categories of non-surplus emission reductions in the proposed approval reads "any emission reduction whose original emission reduction is not included in the District's emission inventory. See 40 CFR 51.165(a)(3)(ii)(C)(1)." The District commented that "[t]he citation [40 CFR § 51.165(a)(3)(ii)(C)(1)] refers \* \* \* only to '(e)missions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels'. There is not a requirement in the Code of Federal

Regulations to include an emission reduction resulting from a source employing emission reduction techniques, not otherwise required by the federal CAA, in the District's emission inventory."

*Response 2:* 40 CFR 51.165 describes the minimum regulatory requirements for an approvable state NSR permitting program. 40 CFR 51.165(a)(3)(ii)(C)(1), which deals with offsets, states that reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may generally be credited in NSR permitting actions if such reductions are permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In contrast to the meaning given to it in the District's comment, the provision serves the narrow purpose of stating that ERCs generated by shutting down a source or curtailing production or operating hours can only be used if there is an EPA-approved attainment plan and if the item is "explicitly" included in the most recent emissions inventory. The provision is essentially a safeguard to make sure that emissions from defunct sources are not replaced with new emissions without appropriate review to ensure that such replacements are consistent with attainment purposes for the area. The provision in no way limits or changes the necessity that all emission reductions used for NSR offsetting purposes be incorporated into the area's emission inventory, either explicitly or implicitly. The use of emission reductions for NSR purposes whose original emissions are not included in the emissions inventory, and therefore not considered in the planning process, would be adding new unaccounted emissions into the area thus potentially jeopardizing attainment goals. As such, EPA has maintained the definition for this category as originally proposed.

*Comment 3:* CCEEB commented that "if an air district includes banked ERCs as a line item in its portion of the SIP, the ERCs are accounted for as emissions in the air and are mitigated by measures in the plan. To discount such ERCs at the time of use would result in a "double mitigation." CCEEB requests that EPA clarify in the future related notices that EPA does not require discounting of ERCs at time of use where the use of ERCs has been mitigated by other specific measures for rate of progress or attainment demonstration purposes."

*Response 3:* EPA disagrees with CCEEB on its comment. CCEEB's approach would essentially allow any