



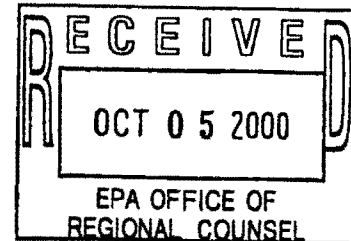
State of Louisiana
Department of Environmental Quality



M.J. "MIKE" FOSTER, JR.
GOVERNOR

J. DALE GIVENS
SECRETARY

October 5, 2000



Carl E. Edlund, P.E.
Director
Multimedia Planning and Permitting Division (6PD)
U. S. Environmental Protection Agency, Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

Dear Carl:

Over the last several months, specifically in discussions relating to the pending "Borden petition" and "5th Circuit SIP Appeal", questions have been raised regarding whether the Louisiana VOC banking rule (LAC 33:III, Chapter 6) and its application are consistent with current EPA policy/guidance regarding Nonattainment New Source Review procedures. Specifically, your office has stated its position that the rule as promulgated should be properly interpreted and applied to require that banked emission reduction credits (ERCs) be reduced in quantity at the time of their use, to account for any emission reductions that would have been required by any new regulations adopted since the time the credited emission reductions were generated. I understand that your position is based on a statement in the Background section of Chapter 6 that the regulation does not alter new source review requirements or exempt owners or operators from compliance with applicable regulations (LAC 33:III.601.A), as well as the language of section 173(c)(2) of the Clean Air Act (and the corresponding state regulation, LAC 33:III.504.F.10). Such an interpretation would be consistent with EPA's current national "surplus when used" policy. Your office has further noted that the Agency's approval of the rule in July 1999 was premised on this interpretation.

I must clarify, however, that the Department intended, interprets and has applied the rule to prohibit such a reduction in quantity of emission reduction credits. We believe that our intention is illustrated in the rulemaking record, by our first including and later striking rule provisions that would have adopted the "surplus when used" practice, as well as by our response to comments received during the rulemaking process. In addition, the rule establishes definitions and procedures for calculating ERCs that set forth a "surplus when generated" approach and further provides for the protection of credits once approved (LAC 33:III.605, 607.G, and 621).



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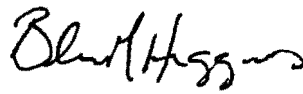
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Because it is our firm belief that the SIP approved banking system for offsets and netting in Louisiana does not require, and in fact prohibits, a review and adjustment of emission reduction credits at the time of their use, it has not been our practice to perform such a review. I fully acknowledge that these apparent inconsistencies between the State rule and Federal policy, or between the State and Federal interpretation of our rule, must be resolved. Toward this end, the Department has already begun a review of the rule to consider whether it should be revised or repealed in the context of our ongoing 2001 SIP development, or in a separate process. I look forward to a mutually satisfactory resolution of this issue and will be happy to discuss this matter with you further at any time.

Sincerely yours,



Bliss M. Higgins
Assistant Secretary