November 12, 1997

MEMORANDUM

SUBJECT: Crediting of Maximum Achievable Control Technology (MACT) Emission Reductions for New Source Review (NSR) Netting and Offsets

FROM: John S. Seitz, Director /s/ by Henry Thomas
Office of Air Quality Planning and Standards (MD-10)

TO: Bob Hannesschlager, Acting Director
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This memorandum responds to the August 27, 1997 memorandum from Allyn M. Davis requesting the Environmental Protection Agency's (EPA) policy concerning whether emissions reductions needed to meet requirements for MACT codified at 40 CFR part 63 - National Emissions Standards for Hazardous Air Pollutants for Source Categories may be credited for NSR netting. The NSR netting is the procedure for determining if a modification at major stationary sources must meet the major NSR provisions of parts C and D of title I of the Clean Air Act (Act). The EPA has received other inquiries asking for EPA to clarify whether MACT emissions reductions are precluded from being creditable for NSR netting.

This memorandum also reiterates EPA's interpretation of section 173(a)(1)(A) of the Act regarding crediting of MACT emissions reductions in meeting the NSR offset requirement that applies to new or modified major stationary sources in areas designated as nonattainment.

BACKGROUND

Section 112(d) of the Act as amended in 1990 requires that certain source categories apply the MACT to reduce emissions of hazardous air pollutants. The new MACT requirements

are codified at 40 CFR part 63.[1] In many cases these emissions reductions to meet MACT may also result in emissions reductions of other air pollutants [e.g., hazardous air pollutants (HAP) may also be volatile organic compounds (VOC) or particulate matter] that are regulated under the major NSR program. [2]

The major NSR program applies to new or modified major stationary sources of air pollutants and includes requirements for prevention of significant deterioration (PSD) for attainment/unclassified areas and for nonattainment NSR in nonattainment areas. Modifications that are considered a physical change or change in the method of operation at major stationary sources are subject to the major NSR requirements if the modification results in a significant "net emissions increase" of an NSR regulated pollutant from the source [see, e.g., 40 CFR 52.21(b)(2)(i)]. The term NSR netting refers to the process of considering certain previous and prospective emissions changes at an existing major source over a contemporaneous period to determine if a "net emissions increase" will result from a proposed modification [see, e.g., 40 CFR 52.21(b)(3)(i)]. If the "net emissions increase" is significant, then major NSR applies [see, e.g., 40 CFR 52.21(b)(23)]. To be creditable for NSR netting an emissions reduction should be consistent with State rules, EPA's NSR rules [see, e.g., 40 CFR 51.165(a(1) (vi)(E)(3)], and EPA's Emissions Trading Policy Statement (ETPS) [see 51 FR 43814, December 4, 1986]. As stated in the ETPS, an emissions reduction must be considered "surplus" to be creditable for NSR netting.

The NSR netting procedure is different from the requirement to obtain NSR offsets. In general, NSR netting is the procedure at major stationary sources for determining whether a proposed emissions increase of an air pollutant from a modification, along with other creditable emissions increases and decreases over a contemporaneous period, is significant and therefore subject to the major NSR provisions. For NSR permitting in nonattainment areas, NSR offsets are required for new major stationary sources for modifications at major stationary sources once it has been determined, using the NSR netting procedure, that the modification is significant. In

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[1] The NSR regulations that were adopted prior to the 1990 Amendments to the Act do not allow crediting of emissions reductions to meet the National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements at 40 CFR part 61 for NSR netting [e.g., see 40 CFR 51.165(a)(1)(vi)(E)(1) and 51.l65(a)(1)(xi)]. In practice, part 61 reductions are generally precluded from current and future NSR netting since part 61 reductions likely occurred prior to 1990 and are outside the current and future contemporaneous periods for NSR netting. This policy applies to part 63 emissions reductions and does not alter the requirement for emissions reductions under part 61. The EPA will consider proposing regulatory change in the future to delete this prohibition for part 61 emissions reductions.

[2] Section 112(b)(6) of the Act generally excludes the HAP listed in section 112 (as well as any pollutants that may be added to the list) from the PSD provisions of part C of title I.

summary, for modifications at major stationary sources in nonattainment areas that increase emissions of nonattainment pollutants, NSR netting is the procedure for determining if the net emissions increase is significant and subject to the major nonattainment NSR requirements, including NSR offsets.

NETTING POLICY

Since the MACT program is not designed to limit criteria or other pollutants regulated by NSR programs of parts C and D of title I of the Act, EPA's policy is that actual emissions reductions of hazardous or other air pollutants that result from complying with MACT regulations codified at 40 CFR part 63 may be considered "surplus" for purposes of NSR netting and are not precluded from NSR netting as long as the reductions are otherwise creditable under NSR. Of course, if MACT reductions are relied on in State implementation plans for criteria pollutant attainment purposes (e.g., RACT, reasonable further progress, rate of progress, attainment demonstrations), then the reductions are not creditable for NSR netting since this would be "double counting" of the emissions reduction within the same criteria pollutant program. As discussed below, this netting policy does not change the requirement for nonattainment areas that significant net emissions increases of nonattainment pollutants from modifications at major stationary sources must be more than offset by actual emissions reductions that are not otherwise required by the Act.

For example, if compliance with a MACT standard under part 63 at a major source results in an actual emissions decrease of 200 tpy in toluene emissions, which is both a hazardous air pollutant under section 112 and a VOC under NSR, the reduction may be available for NSR netting at the source (1) as long as the reduction has not been used to meet RACT or other attainment strategies (e.g., the 15 percent reduction requirement for certain ozone nonattainment areas) and, (2) the reduction is otherwise creditable under NSR. Of course, if after NSR netting the emissions increase is significant, then the NSR offset requirement applies.

OFFSETS POLICY

The EPA's policy for NSR offsets is that since hazardous emissions reductions required to meet the MACT standards at 40 CFR part 60 and part 61, including emissions reductions to meet the early reduction requirements of section 112(i)(5), are required by the Act these emissions reductions are not creditable as NSR offsets.[3] However, any emissions reductions that are in excess of or incidental to the MACT standards are not precluded from being creditable as NSR offsets as long as all conditions of a creditable offset are met [see 57 FR 13553, April 16, 1992.]

The policies set forth in this document do not change existing EPA regulations, are intended solely as guidance, do not represent final agency action, and cannot be relied upon to

[3]Section 173(a)(1)(A) of the Act requires that emissions increases of nonattainment pollutants from new or modified major stationary sources in nonattainment areas be offset by existing emissions. Section 172(c)(2) of the Act states that NSR offsets required under section 173(a)(1)(A) must not be otherwise required by the Act.

create rights enforceable by any party.

The Regional Offices should send this memorandum to the States within their jurisdiction. Questions concerning specific issues and cases should be directed to the appropriate Regional Office. The Regional Office staff may contact Mr. Mike Sewell of the Integrated Implementation Group at (919) 541-0873 if they have any questions. This document is available on the technology transfer network (TTN) NSR bulletin board. The bulletin board may be accessed through the TTN Web site at hppt://www.epa.gov/ttn/ under NSR-New Source Review Information. Readers unfamiliar with this web site may obtain help by calling the TTN help line at (919) 541-5384.

cc: Regional Air Division Directors, I-X