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Ref: Comments on Proposed regulation AQ211

Introduction

The Clean Air Act (CAA) provides a way for industrial expansion in ozone nonattainment areas that allows for expansion but also improves the air quality (See CAA Section 182(c)(10)). This is done using the "emissions offset" program. The offset program requires that when a facility expands or builds it must first take out more air emissions than it plans to put in. This can be done by cutting back emissions from another plant or buying reduced emissions from another company. In the Baton Rouge ozone nonattainment area, which is currently classified as Serious, 1.2 tons of emissions must be taken out of the air for each 1.0 tons of emissions the new plant will put into the air. The emissions taken out of the air are called offsets and the theory is that the more industry expands in a nonattainment area the cleaner the air will get. Offsets are required to be kept in an emissions bank which is run by the Louisiana Department of Environmental Quality (DEQ).

Louisiana chose not to comply with this requirement of the Clean Air Act and instead decided that all the emissions put in the bank can be used twice. This defeats the whole purpose of the offset provisions of the CAA, is not in compliance with the CAA, is not in compliance with EPA guidelines and is a truly bad idea.

The DEQ has now been caught doing this and Louisiana is now known to be the only state in the nation choosing to cheat on the CAA in this way. As a result, Louisiana must now change its emissions banking regulations to bring them into compliance with the CAA.

Two Examples

Example one shows how DEQ allowed emission reductions to be used twice through the Louisiana emissions banking system. The ExxonMobil plastics plant in North Baton Rouge was expanding and needed offsets to allow for the expansion. They obtained the offsets from another ExxonMobil facility in Baton Rouge, which unbeknownst to the plastics plant had already been used at the other facility.

DEQ then claimed that the Louisiana emissions banking regulations allowed all banked emissions to be used twice, once for netting purposes and once again as offsets. When brought to their attention, the EPA correctly recognized this as being in violation of the CAA and in violation of EPA guidelines on offset banking and use.

The second example shows how poor DEQ's record keeping and emissions banking procedures are. Borden bought emission offsets from Georgia Gulf for a new plant they were building. DEQ accepted these Georgia Gulf offsets as real and allowed Borden to use them. After we complained about this, the EPA investigated. The EPA found that the original Georgia Gulf offsets had never been put in the emissions bank and that no emissions bank transaction was recorded by DEQ for this transfer of offsets from Georgia Gulf to Borden. Both of these conditions are required for offsets to be legally sold and used to obtain a permit.

The EPA went further and determined that the Georgia Gulf offsets were never valid offsets anyway and that they actually represented Georgia Gulf air permit violations. This example shows that DEQ doesn't keep adequate records of the

emissions bank nor does it care about the validity of the offsets it allows companies to use.

Comments

These comments are submitted on behalf of the Louisiana Environmental Action Network, all its members and all its member groups.

1. The proposed regulations make no provision for nor do they attempt to find the invalid offsets that have already been used in existing air permits. There is also no attempt to make any restitution for past permits that used invalid offsets. This will only hurt the pollution problems in Louisiana and keep the Baton Rouge area from attaining the ozone standard, not to mention that the use of invalid offsets is a violation of federal law.

We ask that all Title V permits that have been issued in a nonattainment area be examined to ensure that they were issued with valid offsets. Those permits that were issued using invalid offsets should be revoked and the permit process started over.

2. The new regulations make no effort to find bad offsets that are currently in the bank. The regulations will help keep illegal offsets out of the bank in the future, but the illegal offsets currently in the bank get to stay there.

We ask that all offsets currently in the bank be examined to ensure that they are valid offsets under the new regulations.

3. The new regulations propose to remove all references to the contingency requirements of the current State Implementation Plan (SIP). Contingency requirements are federal law and are to be implemented if the SIP fails to bring the state into compliance with the national air standards. (CAA 182(c)(9))

The Baton Rouge ozone nonattainment area failed to come into compliance with the national standard by its November 15, 1999 deadline. At that time the contingencies should have been implemented. One of the three contingencies in the Louisiana SIP was to remove approximately half of the offsets from the emissions bank. This has never been done and now DEQ proposes to drop this requirement altogether so they keep all the existing offsets, legal or not, in the bank for future use.

We ask that the contingency requirements in the current SIP be implemented immediately. The banked emissions contingency should be implemented only after the bank has been purged of illegal offsets and that no illegal offsets be used to meet the contingency requirement.

4. The new regulations remove the definition of New Source Review from the banking regulations. There is no reason given by DEQ for removing this definition. The New Source Review requirements of the CAA are federal law, and removing the definition from the banking regulations is equivalent to DEQ putting its head in the sand.

Sincerely,

Marylee Orr
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