

MEMORANDUM

SUBJECT: Offsets in Nonclassifiable Areas

FROM: Edward J. Lillis, Chief
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TO: Robert Miller, Chief
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This is in response to your March 30, 1993 memorandum to David Solomon requesting guidance on behalf of the Michigan Department of Natural Resources (MDNR). The MDNR asked how the offset criteria under section 173(c) of the Clean Air Act (Act), concerning the use of emission reductions in one nonattainment area as emission offsets in another nonattainment area, should be applied to the nonclassifiable areas in the State of Michigan. Basically, the MDNR appears to be interested in guidance concerning the following two issues:

(1) Are the nonclassifiable areas (categorized as "transitional" and "incomplete data") in Michigan considered as separate nonattainment areas, or can they be considered as one nonattainment area for purposes of obtaining offsets?

(2) If the nonclassifiable areas are treated as separate nonattainment areas, can an emission reduction obtained in a transitional area be used as an emission offset in an incomplete data area (and vice versa), without having to show that emissions from such area contribute to a violation in the nonattainment area where the new source is locating?

A number of counties in the southern half of the lower peninsula of Michigan are ozone nonattainment areas categorized as either "transitional" nonclassifiable areas or "incomplete data" nonclassifiable areas. In a January 14, 1993 letter from David M. Yanochko, MDNR, to Beth Burns, EPA Region V, the MDNR took the position that for purposes of the section 173(c)(1) requirements, "the entire contiguous nonclassifiable area should be considered the same nonattainment area regardless of the additional category designation" (i.e., "transitional" and "incomplete data"). However, based on an examination of the nonattainment designations listed in 40 CFR 81.323, there are actually several nonattainment areas for ozone in the State of Michigan with nonclassifiable classifications of either "transitional" or "incomplete data." These

individual nonattainment areas were established on November 6, 1991, through formal Agency rulemaking, and were the result of a detailed deliberative process conducted pursuant to the Act requirements. Therefore, regarding the first issue, it is our position that each nonattainment area should be considered as a separate nonattainment area consistent with the formal designations.

Regarding the second issue, the requirements under sections 173(c)(1)(A) and (B) must both be satisfied when emission reductions from one nonattainment area are used as emission offsets in another nonattainment area. That is, the area in which the emission reduction will occur has an equal or higher classification than the area in which the new source is located [section 173(c)(1)(A)], and emissions from such other area contribute to a violation of the national ambient air quality standards in the area where the new source is located [section 173(c)(1)(B)].

In Michigan, two of the nonattainment areas which are nonclassifiable (Lansing-East Lansing and Saginaw-Bay City-Midland) are multi-county areas; the remaining areas consist of only one county each. Thus, if the MDNR wishes to use an emission reduction in a county which, itself, is a nonattainment area (e.g., St. Joseph County) as an offset credit for a new source in an adjoining county which is a separate nonattainment area (e.g., Branch County), then the two criteria contained in section 173(c)(1)(A) and (B) described above must be satisfied in each case. If, on the other hand, the MDNR wants to use emission reductions from one county to another within the same nonattainment area, then the reductions can be used without consideration of the offset criteria under section 173(c)(1)(A) and (B).

With respect to the treatment of transitional areas and incomplete data areas for offset credit purposes, it is our position that there should be no distinction in the two classifications since both are subject only to subpart 1 of the Act, and the control requirements imposed on them are identical. Thus, for the purpose of addressing section 173(c)(1)(A), all nonclassifiable areas would be treated as being of equal nonattainment classification.

I hope this response enables you to adequately address the MDNR's concerns about the proper implementation of the offset requirements in nonclassifiable areas. If you care to discuss this matter further, please call Dan deRoeck at (919) 541-5593.

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Section file