



Interchangeable Emission Reduction Credits

Part 2

The February 27, 1998 Public Workshop

About 20 people attended the Bay Area Air Quality Management District's ("Bay District") second public workshop on its draft Interchangeable Emission Reduction Credit Rule ("IERC Rule"). Two Bay District engineers and an attorney led the workshop. Several other Bay District engineers and managers attended to answer questions. The following interested parties participated in the February 27, 1998 workshop:

- governmental agency representatives, including representatives from the California Air Resources Board and the U.S. Environmental Protection Agency;
- employees from several area oil refineries;
- a Pacific Gas & Electric representative;
- several private environmental consultants; and
- a Communities for a Better Environment ("CBE") representative.

The Supervising Air Quality Engineer began the workshop promptly at 10:00 a.m. Charged with developing the rule, he described the proposed rule's major provisions and compared them with the existing emission reduction credit offset program for new and modified stationary sources. After providing this background information, Bay District employees answered questions posed by workshop participants. During the workshop, the

Mary Decker prepared this case study, under the editorial guidance of Barton H. ("Buzz") Thompson, Jr., Robert E. Paradise Professor of Natural Resources Law, Stanford Law School, as a basis for classroom discussion rather than to illustrate either effective or ineffective handling of an environmental matter. Some or all of the characters or events may have been fictionalized for pedagogical purposes. Copyright © 1998 by the Board of Trustees of the Leland Stanford Jr. University. To request permission to use or reproduce case materials, write to Environmental and Natural Resources Law and Policy Program, Stanford Law School, 559 Nathan Abbott Way, Stanford, CA 94305 or visit www.stanford.edu/group/law/library/casestudies/lawschool.shtml.

CBE representative presented the Supervising Engineer with the organization's written comments. The Supervising Engineer concluded the workshop at noon.

CBE's Concerns

After the workshop, Bay District employees reviewed CBE's written comments. These comments are attached as Exhibit A to this case study. In its comments, CBE argued that the proposed IERC rule would provide little if any environmental benefit. According to CBE, the draft rule's provisions were unenforceable. CBE said the Los Angeles car scrapping program has already demonstrated that market-based trading programs allow governmental agencies to grant credits for pollution reductions that really do not exist. CBE also argued that the draft IERC rule could create toxic hot spots in minority communities near industrialized areas:

For example, allowing oil refineries to escape the hard won requirements for reductions from measures like tight leak standards for thousands of valves, like controls on marine loading emissions, and from many other site-specific controls, will increase pollution in industrial neighborhoods by many tons per day, and trade these reductions for a theoretical and very likely non-existent gain to the region at large. Often the neighborhoods with the highest density of these heavy industrial sources and worst impacted are communities of color.

Other Comments on the Draft Rule

The Exxon Company, the Western States Petroleum Association ("WSPA"), and the California Air Resources Board ("CARB") also submitted written comments on the draft IERC rule. These comments are attached as Exhibit B. In the future, the Bay District expects to receive comments from the U.S. Environmental Protection Agency's Regional Office in San Francisco.

Conclusion

You are counsel for the Bay District. You participated in the workshop and have reviewed the written comments on the draft rule. Now you must recommend a course of action. What steps should the Bay District take next? Are CBE's concerns legitimate? Is the IERC rule viable, or should the Bay District abandon the idea entirely? If the District goes forward with the IERC rule, what, if any, changes should it make in the rule? Do you believe the Bay District can convince CBE of the rule's efficacy? If so, how?

Case Study Exhibits

Exhibit A: CBE comments on the draft IERC rule (without attachments)
Exhibit B: Exxon, WSPA, and CARB comments on the draft IERC rule