



Interchangeable Emission Reduction Credits

Parts 1 and 2

Teaching Note

Synopsis

In this two-part case study, the students analyze the Bay Area Air Quality Management District's draft interchangeable emission reduction credit ("IERC") rule, which aims to provide regulated sources with greater flexibility in meeting future air pollution regulations. The Bay District expects that oil companies and utilities may want to use the proposed IERC trading program to comply with future NO_x and CO stationary source retrofit requirements. The Bay District also expects that Communities for a Better Environment ("CBE"), an environmental justice organization, will oppose the rule. CBE has already filed two lawsuits challenging a Los Angeles car scrapping credit trading program, arguing that it creates toxic hot spots in minority neighborhoods.

Part 1 of the case study asks the students to review the Bay District's draft IERC rule from CBE's perspective. What comments on the draft rule should CBE submit? Does the rule suffer from the same problems as the Los Angeles car scrapping program? Should CBE oppose *all* credit trading programs? What specific changes to the draft rule would you recommend as CBE's attorney?

Part 2 of the case study asks the students to put themselves in the position of staff counsel for the Bay District. After reviewing the written comments the Bay District received on the draft IERC rule from CBE, Exxon, the Western States Petroleum Association, and the California Air Resources Board, the students must recommend what steps the Bay District should take next.

Mary J. Decker prepared this note, under the editorial guidance of Barton H. ("Buzz") Thompson, Jr., Robert E. Paradise Professor of Natural Resources Law, Stanford Law School, for the sole purpose of aiding classroom instructors in the use of SLS Case Nos. SLS 98-013 and 98-014. It provides analysis and questions intended to present alternative approaches to meeting the learning objectives of the case and stimulating class discussion. Copyright © 1998 by the Board of Trustees of the Leland Stanford Jr. University.

Positioning

This case study was developed for use in Law 603, Environmental Law, Policy and Process at Stanford Law School. Law 603, an introductory environmental course, covers regulatory approaches, waste management, toxics regulation, administrative issues, the Federal Clean Air Act, and enforcement. The students discuss this case study towards the end of the course, after the teacher has lectured on NAAQSs, SIPs, interstate air pollution, and mobile sources.

Learning Objectives

Part 1 The students should gain a better understanding of the interests and motivations of an environmental justice organization as the students analyze the legal background and predict the practical results of the proposed emission reduction credit trading program. In particular, the students must analyze this rule in the context of the organization's goals and limited resources.

Part 2 The students should gain practical experience in analyzing the legal requirements and governmental decision making involved in developing an air pollution emission reduction credit trading program. The students will have to identify, and attempt to appropriately balance, the competing interests of federal, state and local governmental agencies, the regulated community, and environmental organizations.

Case Study Exhibits

List of Case Study Exhibits

Part 1:

- A Selected California Health & Safety Code provisions
- B South Coast Air District Rule 1610
- C April 25, 1998 article from the Los Angeles Times
- D CBE comments on South Coast's car scrapping program
- E California Air Resources Board IERC regulations
- F Proposed Bay District IERC rule

Part 2:

- G CBE comments on the draft IERC rule (without attachments)
- H Exxon, WSPA, and CARB comments on the draft IERC rule

Part 1:

A Selected California Health & Safety Code provisions

Exhibit A contains five California Health & Safety Code provisions. These particular provisions are appended to the case study to show the direction and guidance provided to the Bay District under State law. Health & Safety Code §39607.5 requires that CARB promulgate IERC regulations to guide the air districts in their development of local trading programs. CARB published these regulations in May 1997 and they are attached as Exhibit E to the case study. Section 40406 provides the students with the statutory definition of Best Available Retrofit Control Technology. Section 40714.5 directs the air districts to develop emission reduction credit trading programs aimed at achieving voluntary emission reductions from unregulated sources. Section 40920.6 requires that the air districts compute the cost-effectiveness of rules and regulations and allow alternate (less expensive) means of complying with the rules. Section 40914 lays out the emission reduction requirements for districts that have not achieved ambient air quality standards. Districts (such as the Bay District) that cannot demonstrate to CARB that they can meet the statutory reduction schedule, must develop retrofit standards for existing stationary sources. Students should be encouraged to review additional statutory and regulatory provisions on their own. The case study provides the internet address site for the Bay District, where the text of its air pollution rules and regulations are posted.

B South Coast Air District Rule 1610

This 11-page rule describes the South Coast's car scrapping program. In exchange for taking old cars off the road, the South Coast issued emission reduction credits. The students will also review CBE's objections to this rule, attached as Exhibit D to the case study.

C April 25, 1998 article from the Los Angeles Times

This three-page newspaper article announces the South Coast's decision to overhaul its car scrapping program under Rule 1610, in light of an employee's charge that car scrapping credits were being fraudulently generated. The students should use this article, Rule 1610, and CBE's comments on Rule 1610, to determine what new or revised language should be included in the draft IERC rule to prevent similar problems.

D CBE's comments on South Coast's car scrapping program

This 14-page letter, and three attached memos, contains CBE's critique of the South Coast's car scrapping program under Rule 1610. The letter focuses on CBE's environmental justice arguments. South Coast employees wrote the three attached memos, describing the difficulties they faced in implementing the car scrapping program.

E California Air Resources Board IERC Regulations

This four-page regulation provides broad policy guidance to the air districts on development of IERC programs. The regulation establishes generic criteria for a State-wide methodology for calculating the value of credits from stationary, area, and mobile sources.

F Proposed Bay District IERC rule

Exhibit F contains the text of the Bay District's 11 page proposed IERC rule.

Part 2:

G CBE comments on the draft IERC Rule (without attachments)

This exhibit contains the letter CBE submitted to the Bay District commenting on the proposed IERC rule. The exhibit also includes a one-page list of the voluminous attachments to CBE's letter. Students can compare CBE's comments on the draft IERC rule with the points they raised in their discussion of Part 1 of the case study.

H Exxon, WSPA, and CARB comments on the draft IERC rule

Exhibit H contains the comments on the draft IERC rule that other interested parties submitted to the Bay District. These comments are included in their entirety and raise several new issues for the Bay District to consider in revising the rule. The students must analyze these additional comments and recommend what steps the Bay District's should take next in light of all the comments received.

Teaching Plan

Law 603 meets for 65 minute class periods. The proposed teaching plan assumes that one class period will be devoted to each part of the case study and that a class guest will participate in each part of the case study. For Part 1, a lawyer from CBE will attend as a guest. For Part 2, a lawyer from the Bay District will attend.

Teaching Plan

(1)	Opening	1 minute
(2)	Student Discussion	40 minutes
(3)	Class Guest	20 minutes
(4)	Closing	4 minutes
	Total Class Time	65 minutes

Discussion

Part 1:

(1) Opening — 1 minute

Here is one possible opening for Part 1: The Bay Area Air Quality Management District has drafted a rule that would establish an interchangeable emission reduction credit trading program. The proposed rule allows sources to generate credits from emission reductions at area, mobile, and stationary sources, and to use these credits to comply with future, more stringent air pollution requirements. The credits generated are interchangeable, meaning, for example, that credits generated by reducing mobile source emissions can be used to meet certain emission reductions applicable to stationary sources. You are an attorney for Communities for a Better Environment, an environmental justice group that is fighting to stop a car scrapping emission trading programs in Los Angeles. CBE believes that many of the car scrapping credits generated in the Los Angeles program are fraudulent, and that the program could result in the creation of toxic hot spots in low income minority neighborhoods. You have been asked to recommend a course of action for CBE with regard to the Bay District's proposed rule. What do you recommend?

(2) Possible Discussion Question Areas — 40 minutes

CBE Strategy What are you (CBE's attorney) going to do about this proposed rule? Is the rule worth devoting your organization's resources to? Should you provide written comments? What will your comments be? What are your key concerns? Consider the following issues: establishment of baseline emissions, protocol development by CARB and the Bay District, verification of "real" reductions, public participation in trades and use of credits, distributional impacts of credit use, anti-backsliding protections, and creation of property rights.

How are the four examples of emission trading program described in the case study similar to and different from the draft IERC rule? Should an organization like CBE oppose ALL emission trading programs? Why? Why not? Can any of the organization's goals be met through trading programs?

Comparison with Rule 1610 Is this rule similar to Rule 1610? Do you expect a net environmental gain or loss from the draft IERC rule's operation? How will the provisions of the draft IERC rule lead to improved air quality? (Consider: overcontrol of emissions, 10% environmental discounting, increased compliance rates, and voluntary reduction of emission from unregulated sources.)

BARCT What is BARCT? Why is it an important concept in analyzing the draft IERC rule?

Legal Background Where did the draft IERC rule come from? Is it required under Federal or State law? What statutory or regulatory guidance has been provided to the Bay District regarding development of the rule?

Other perspectives The students could also be asked to put themselves in the place of an oil company that wants to use IERCs in lieu of compliance with BARCT Rule 9-10. How should the oil company proceed?

Regarding specific issues that CBE may provide comments on, the students in the past have raised and discussed the following issues:

- | | |
|--|--|
| <ul style="list-style-type: none"> ➤ public participation in credit awards ➤ public participation in credit use ➤ verification that credits are real and surplus ➤ public participation in development of protocols | <ul style="list-style-type: none"> ➤ possible restriction of inter-pollutant trades, pending toxicity analysis of emissions |
| <ul style="list-style-type: none"> ➤ possible limitation on the number of IERCs that a stationary source could use, or limitation on the time period during which any individual source could use IERCs ➤ cumulative impacts of credit use in the same geographic area | |

(3) Class Guest — 20 minutes

The class guest, a CBE attorney, should use most of their time to respond to whatever analytical points the students raise. The teacher should tell the guest ahead of time to take notes during the student discussion and be prepared to respond to, expand on, critique, or clarify the points the students raise. The class guest should reserve a few minutes for a question and answer session with the students. An update on what steps CBE actually took should be incorporated into the guest's presentation.

(4) Closing – 4 minutes

The teacher may close the discussion session by briefly summarizing the most important points that emerged from the discussion.

Part 2:

(1) Opening — 4 minutes

Here is one possible opening for Part 2: You are counsel for the Bay Area Air Quality Management District. You have now received written comments on the draft IERC rule from CBE, the Western States Petroleum Association, Exxon Company, and CARB, the California Air Resources Board. You have been asked to analyze the comments, identify important legitimate concerns raised, and recommend a follow up course of action to the Air Pollution Control Officer for the Bay District. What legitimate concerns have you identified? What steps do you recommend the Bay District take to address those concerns?

(2) Possible Discussion Question Areas — 40 minutes

Consideration of Comments Received What issues have been raised by the various commentors? Identify the most important concerns. Are all the concerns raised legitimate? Consider the following issues: What do existing statutes and regulations require? How does the rule ensure that reductions will be real? How can potential localized impacts be addressed? Should the rule differentiate between different chemicals based on their toxicity? Should additional public participation requirements be incorporated into credit certification and use? Why? Why not?

Next Steps Recommend a followup course of action for the Bay District to take. What specific steps do you recommend? Given the concerns raised, should the Bay District abandon the proposed rulemaking?

(3) Class Guest — 20 minutes

The class guest for Part 2, Bay District counsel, should use most of their time to respond to the analytical points raised by the students. The teacher should tell the guest ahead of time to take notes during the student discussions and be prepared to respond to, expand on, critique, or clarify the points the students raise. The class guest should reserve at least five minutes to engage in a question and answer session with the students. An update on what steps the Bay District actually took in response to the comments received and a status report on the rule's development should be incorporated into the guest's presentation.

(4) Closing — 4 minutes

In closing the teacher should summarize the key points raised in the discussion, providing clarification where needed.