

ATTACHMENT D

For Opinion See [31 F.3d 1179](#)

United States Court of Appeals, District of
Columbia Circuit.

SANTA BARBARA COUNTY AIR POLLUTION
CONTROL DISTRICT, Petitioner,

v.

Carol M. BROWNER, Administrator, U.S. Environ-
mental Protection Agency; and U.S. Environ-
mental Protection Agency, Respondents,
and WESTERN STATES PETROLEUM ASSOCI-
ATION, Intervenor.

No. 92-1569.

January 11, 1994.

On Petition for Review of a Final Rule of the
United States Environmental Protection Agency

Final Brief for the Respondents

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the United States Environmental Protection Agency (“EPA”), in enacting a final rule regulating air pollution from sources on the Outer Continental Shelf (“OCS final rule” or “final rule”), properly interpreted section 328 of the Clean Air Act (“CAA” or the “Act”), 42 U.S.C. §§ 7401-7671q, as not providing for direct regulation of marine vessels in transit.

2. Whether EPA, in enacting the OCS final rule, properly interpreted section 328 of the Act as requiring the same regulatory treatment, as opposed to the same regulations, regarding the calculation of offsets for OCS sources, and whether the final rule's approach to offsets reasonably implemented this interpretation.

STATUTES AND REGULATIONS

This petition for review challenges a final rule promulgated by EPA pursuant to section 328 of the CAA, 42 U.S.C. § 7627. The final rule, entitled “Outer Continental Shelf Air Regulations” (“OCS final rule”), was published in the Federal Register on September 4, 1992. 57 Fed. Reg. 40,792 (Sept. 4, 1992).^[FN1] Statutes and regulations pertinent to this proceeding are set out in an addendum to this brief.

FN1. The OCS final rule will be (but has not yet been) published at 40 C.F.R. Part 55. In this brief, we will cite the final rule either at the location where it was pub-

lished in the *Federal Register*, or, where more specificity is needed, to “40 C.F.R. § 55.____.”

JURISDICTION

This petition for review was timely filed on November 2, 1992, and the Court has jurisdiction over this proceeding pursuant to section 307(b) of the Act, 42 U.S.C. § 7607(b).

STATEMENT OF THE CASE

A. Nature of the Case

In this petition for review, Santa Barbara contends that the aspects of the final rule addressing control of emissions from marine vessels in transit and offset requirements for OCS sources are inconsistent with the mandate of section 328 of the CAA, 42 U.S.C. § 7627. On the former point, Santa Barbara contends that EPA impermissibly failed to provide for direct air pollution regulation of marine vessels in transit. On the latter point, Santa Barbara contends that EPA impermissibly provided for the application of offset requirements to OCS sources that are not the same as offset requirements that apply to corresponding onshore sources.^[FN2]

FN2. Santa Barbara also raised a third issue in its brief, relating to the final rule's treatment of delegation of authority to states. See Brief of Petitioner (“Pet. Br.”) at 2, 31-33. As described more fully in our Unopposed Motion For 14 Day Stay of Proceedings on Delegation Issue (“Motion for Stay”), filed concurrently herewith, EPA has decided to issue a clarification of certain preamble language regarding the delegation issue which will obviate the need for judicial proceedings on that issue at this time. The requested short stay of proceedings on the delegation issue will afford the parties an opportunity to attempt to reach agreement on an appropriate procedural disposition of this issue to propose to the Court in light of EPA's decision. The

stay of proceedings on the delegation issue should not in any way disrupt the briefing or argument of the vessels and offsets issues.

B. Statutory and Regulatory Background

I. Clean Air Act Overview

The Clean Air Act, first enacted in 1970 and extensively amended in 1977 and 1990, establishes a joint state and federal program to control the Nation's air pollution. Section 109 of the Act, [42 U.S.C. § 7409](#), calls for the establishment of primary and secondary national ambient air quality standards (“NAAQS”) for certain pollutants. Primary standards are those necessary to protect public health with an adequate margin of safety ([42 U.S.C. § 7409\(b\)\(1\)](#)); secondary standards are those necessary to protect the public welfare ([42 U.S.C. § 7409\(b\)\(2\)](#)). Under section 109, the Administrator of EPA is responsible for establishing both sets of standards. Generally speaking, Title I of the Act, [42 U.S.C. §§ 7401 to 7515](#), includes the substantive requirements that apply to stationary sources of air pollution, while Title II of the Act, [42 U.S.C. §§ 7521 to 7590](#), includes the requirements that apply to mobile sources.^[FN3]

FN3. The Act's additional titles relate to, *inter alia*, noise pollution, acid rain control, operating permit programs, and stratospheric ozone protection.

The Act contemplates that the measures necessary to attain the NAAQS will be applied to individual sources through a State Implementation Plan (“SIP”) prepared by each state, subject to EPA review and approval,^[FN4] for each “air quality control region” within the state. Section 110 of the Act, [42 U.S.C. § 7410](#). A SIP must specify emission limitations and other measures necessary to attain and maintain all standards. [42 U.S.C. § 7410\(a\) \(2\) \(A\)-\(K\)](#).

FN4. EPA reviews all initial and revised SIPs to ensure that the Act's requirements are being met ([42 U.S.C. § 7410\(a\)\(2\)-](#)

[§\(3\)](#)), and EPA is to promulgate a federal implementation plan for a state that fails to submit a SIP meeting the Act's requirements. [42 U.S.C. § 7410\(c\)](#).

Areas which do not meet the NAAQS are designated “nonattainment areas.” *See* [42 U.S.C. § 7407\(d\)](#) (designations generally); [42 U.S.C. § 7501\(2\)](#) (definition of “nonattainment area”). Nonattainment designations are established with respect to each criteria pollutant; thus, an area may be designated as nonattainment for one pollutant, but attainment for another. *Id.* Further, under the Clean Air Act Amendments of 1990, [Pub. L. 101-549, 104 Stat. 2399](#), designated nonattainment areas are classified depending on the severity of the pollution problem. [42 U.S.C. §§ 7502\(a\), 7511\(a\), 7512\(a\), 7513](#). Once an area is designated as nonattainment for a particular pollutant, the SIP that includes the nonattainment area must be revised to include a variety of specified control measures. CAA sections 172-192, [42 U.S.C. §§ 7502-7514a](#).

Areas of the country that meet the NAAQS are termed “attainment areas,” and areas for which information is unavailable to determine whether the NAAQS have been attained are designated “unclassifiable.” [42 U.S.C. § 7407\(d\)\(1\)\(A\)](#). Attainment areas and unclassifiable areas are subject to Part C of Title I, [42 U.S.C. §§ 7470 to 7492](#), which sets out “Prevention of Significant Deterioration of Air Quality” (“PSD”) requirements. Under the PSD program, all attainment areas and unclassifiable areas are designated as Class I, Class II, or Class III areas, pursuant to the procedures outlined in sections 162-164 of the Act, [42 U.S.C. §§ 7472-7476](#). Class I areas are areas such as national parks and wilderness areas; all other areas are considered to be Class II areas unless the area is redesignated as a Class III area by a state pursuant to the procedures set out in section 164 of the Act, [42 U.S.C. § 7474](#). Each of these classes is assigned permissible increments for designated air pollution parameters above the area's “baseline,”^[FN5] and new sources can only be constructed in the area to the extent that the increment is not consumed. [42 U.S.C. § 7473](#).

Generally speaking, permissible increments are the smallest for Class I areas and the largest for Class III areas. *Id.*

FN5. The term “baseline concentration” essentially is defined as the ambient concentration levels for each pollutant which exist at the time of the first application for a PSD permit after the CAA amendments of 1977. 42 U.S.C. § 7479(4).

The provisions for the attainment and maintenance of NAAQS operate primarily through controls on existing sources of pollution. However, the Act requires that major new and modified sources of pollution meet more stringent emission standards. Section 111 of the Act, 42 U.S.C. § 7411, requires the Administrator to adopt technology-based new source performance standards (“NSPS”) limiting the emissions from any new or modified facility in certain industrial categories. Section 111(e) makes it unlawful for such a new source to operate in violation of any applicable NSPS. While EPA has the initial responsibility for implementing NSPS requirements, section 111(c) allows such responsibility to be delegated to states which have enacted appropriate regulations. 42 U.S.C. § 7411(c).

All new major sources or major modifications of existing sources located in nonattainment areas are also subject to the Act's new source review (“NSR”) procedures and permitting requirements. Under EPA's regulations, a major stationary source is a source “which emits, or has the potential to emit 100 tons per year or more of any pollutant subject to regulation under the Act.” 40 C.F.R. § 51.165(a)(1)(iv)(A)(1). However, the CAA amendments of 1990 lowered the major stationary source threshold for criteria pollutants in certain areas. *See, e.g.,* CAA §§ 182(c)-(e), 42 U.S.C. §§ 7511a(c)-(e). A major modification is any physical change or change in the method of operation of a major stationary source that would result in a net emissions increase of any pollutant subject to regulation under the Act, provided that the increase is “significant,” *i.e.*, that it equals or exceeds specified

thresholds. 40 C.F.R. §§ 51.165(a) (1) (v) (A); 51.165(a) (1) (vi) (A); 51.165(a) (1) (x).

All new or modified major sources in attainment or unclassifiable areas, *i.e.*, areas subject to PSD, must comply with the preconstruction permitting requirements in section 165 of the Act, 42 U.S.C. § 7475. Such sources in nonattainment areas must comply with the preconstruction permitting requirements in section 173 of the Act, 42 U.S.C. § 7503. Section 165 requires the source to achieve emission limits based on the best available control technology (“BACT”).^[FN6] 42 U.S.C. § 7475(a)(4). Under section 173, the source must achieve the lowest achievable emission rate (“LAER”)^[FN7] and obtain emission reduction offsets from other sources. 42 U.S.C. § 7503. An offset is an emission reduction from an existing source that compensates for increased emissions from new or modified major sources; such compensation must be equal to or greater than the emissions that will result from the new or modified major source. *See, e.g.,* 42 U.S.C. §§ 7503(c)(1), 7511(a), 7511(a)(4), 7511(b)(5), 7511(c)(10), 7511(d)(2), 7511(e)(1).

FN6. The Act defines “BACT” as an emission limit based on the “maximum degree of reduction” of each regulated pollutant “taking into account energy, environmental, and economic impacts and other costs” that are determined on a case-by-case basis “[to be] achievable for [the] facility.” 42 U.S.C. § 7479(3). BACT standards must be at least as stringent as standards established under sections 111 and 112 of the Act. *Id.*

FN7. “LAER” is defined as the rate of emissions which is the more stringent of: (1) the most stringent limitation contained in any SIP for the same type of source, or (2) the most stringent limitation which is achieved in practice by a source of the same type. 42 U.S.C. § 7501(3).

Section 173(c) of the Act requires that offsets shall be “in effect and enforceable” by the time the new

or modified source begins operation, and makes clear that emission reductions otherwise required by the Act cannot be used to create an offset. [42 U.S.C. § 7503\(c\)](#). In most cases, offsets can be obtained only from the same source or from another source in the nonattainment area. *Id.* However, offsets may be obtained from outside the nonattainment area if the offset is from a nonattainment area with a more severe classification and the emissions from the other area contribute to a violation of the NAAQS for the area in which the new or modified source is located. *Id.* EPA has promulgated an Emission Offset Interpretative Ruling setting out the agency's offset policies in detail. *See* [40 C.F.R. Part 51, App. S](#). The purpose of offset requirements is to ensure consistency with the area's reasonable further progress under the applicable SIP and to require a positive net air quality benefit in a nonattainment area while allowing industrial growth. ^[FN8] The offset requirements of section 173(c) are currently implemented through regulations which are adopted by each state and submitted to EPA for approval as part of its SIP pursuant to [42 U.S.C. § 7410](#) and 40 C.F.R. Part 51, Subpart I.

FN8. In December 1986, EPA issued an Emissions Trading Policy Statement that sets out conditions that EPA considers necessary for emissions trades under the CAA. *See* [51 Fed. Reg. 43,813, 43,830 \(Dec. 4, 1986\)](#). The Emissions Trading Policy explains the rationale for emission offsets as follows:

In *nonattainment* areas, major new stationary sources and major modifications are subject to a preconstruction permit requirement that they secure sufficient surplus emission reductions to more than “offset” their emissions. This requirement is designed to allow industrial growth in nonattainment areas without interfering with attainment and maintenance of ambient air quality standards.

Id. at 43,830.

2. Outer Continental Shelf Provisions

The 1990 amendments to the CAA added section 328, [42 U.S.C. § 7627](#), to address air pollution from activities on certain parts of the OCS. ^[FN9] Prior to the enactment of section 328, regulation of air pollution from all OCS sources had been within the authority of the Department of the Interior pursuant to the Outer Continental Shelf Lands Act (“OCSLA”), [43 U.S.C. §§ 1331-1356](#).

FN9. Section 328's air pollution requirements do not apply to most of the OCS located in the Gulf of Mexico; specifically, the OCS sources that EPA must regulate under section 328 are those “located offshore of the States along the Pacific, Arctic and Atlantic Coasts, and along the United States Gulf Coast off the State of Florida eastward of longitude 87 degrees and 30 minute.... [42 U.S.C. § 7627\(a\)\(1\)](#). The Gulf Coast areas excluded from section 328's regulatory coverage are to be studied by EPA and the Department of the Interior to assess the need for further regulatory action. [42 U.S.C. § 7627\(b\)](#).”

Section 328 directed EPA to “establish requirements to control air pollution from Outer Continental Shelf sources to attain and maintain Federal and State ambient air quality standards and to comply with the provisions of part C of title I.” [42 U.S.C. § 7627\(a\)\(1\)](#). The Act further specifies that

[f]or such sources located within 25 miles of the seaward boundary of [states within the coverage of section 328], such requirements shall be the same as would be applicable if the source were located in the corresponding onshore area, ^[FN10] and shall include, but not be limited to, State and local requirements for emission controls, emission limitations, offsets, permitting, monitoring, testing, and reporting.

FN10. The term “corresponding onshore area” is defined as “the onshore attainment or nonattainment area that is closest to the source, unless the Administrator determines that another area with more stringent

requirements with respect to the control and abatement of air pollution may reasonably be expected to be affected by such emissions.” 42 U.S.C. § 7627(a)(4)(B).

Id. Section 328 also authorizes EPA to grant exemptions from OCS air requirements in certain circumstances, 42 U.S.C. § 7627(a)(2), and sets out procedures under which EPA may delegate authority to adjacent states to implement and enforce the requirements of the section. 42 U.S.C. § 7627(a)(3).

The Act defines the OCS sources subject to regulation under section 328 as “includ[ing] any equipment, activity, or facility which --

(i) emits or has the potential to emit any air pollutant,

(ii) is regulated or authorized under the Outer Continental Shelf Lands Act [43 U.S.C.A. § 1331 *et seq.*], and

(iii) is located on the Outer Continental Shelf or in or on waters above the Outer Continental Shelf.

42 U.S.C. § 7627(a)(4)(C) (bracketed material in original). The definition further provides that “[s]uch activities include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation.” *Id.* Finally, with regard to vessels, the definition states that “[f]or purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source.” *Id.*

3. The OCS Rulemaking Proceedings

EPA published a proposed OCS rule on December 5, 1991, after holding a number of workshops and soliciting comments from interested parties. 56 Fed. Reg. 63,774. With regard to the first of the two issues discussed in this brief, the definition of “OCS source” in the proposal did not explicitly address

vessels. *Id.* at 63,787. However, the preamble to the proposal stated that EPA interpreted the statutory definition of “OCS source” to exclude marine vessels other than drill ships. *Id.* at 63,777. EPA stressed that vessel emissions related to an OCS activity are accounted for by including vessel emissions in the “potential to emit”^[FN11] of the associated OCS source. *Id.*

FN11. “Potential to emit” means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. 40 C.F.R. § 51.166(b)(4). The determination of what new sources or modifications are “major” under the Act for purposes of PSD requirements or NSR requirements is determined by either the actual emissions of the source or the source’s “potential to emit.” *See* 42 U.S.C. § 7479(1) (definition of “major emitting facility”); 40 C.F.R. § 51.166(b)(1) (definition of “major stationary source”); 40 C.F.R. § 51.166(b)(23) (definition of “significant” emissions increases for purposes of determining whether modification is “major”).

With regard to offsets, the proposal provided that offsets obtained from the landward side of the OCS source would be at the base ratio of the corresponding onshore area (“COA”) ^[FN12] with no distance penalties, but that offsets obtained from the seaward side of the OCS source would be subject to all distance penalties required by the COA. ^[FN13] *Id.* at 63,779. The rationale of the proposal was that encouraging OCS sources to obtain offsets from the landward side of the source would have the greatest positive impact on onshore ambient air quality. *Id.*

FN12. *See* note 10, *supra*, for an explanation of the term “corresponding onshore area.”

FN13. A “base ratio” is the ratio of offsets to emissions that a SIP requires a source to obtain. In Santa Barbara, for example, the “base ratio” is 1.2:1, meaning that a source

must obtain 1.2 units of offsets for every new single unit of emissions. Pet. Br. at 16, 29. Distance penalties (sometimes also referred to as distance discounting) are a common feature of offset requirements, and are applied to reduce the value of a potential offset to the source seeking the offset in a ratio proportionate to the distance the proposed offset is from the source.

After soliciting public comment and holding four public hearings on the proposal, EPA published the final rule on September 4, 1992. [57 Fed. Reg. 40,792](#). In the final rule, EPA's view that the statutory definition of "OCS source" did not include marine vessels in transit did not change. However, in response to comments, EPA added explicit language to the definition of "OCS source" to clarify that vessels would be considered OCS sources only when they are "permanently or temporarily attached to the seabed" and are being used "for the purpose of exploring, developing or producing resources therefrom." *Id.* at 40,793-94, 40,807. In addition, the final rule provided that vessels would be considered OCS sources when they are physically attached to an OCS facility, in which case only the stationary source aspects of the vessels will be regulated. *Id.*

The final rule refined the regulatory treatment of offsets from the proposal, and created a three-zone approach to the issue. *Id.* at 40,796, 40,808. The first zone is the zone seaward of the OCS source; as in the proposal, offsets obtained in this zone are subject to any distance penalties required by the COA. *Id.* The second zone is the area from the OCS source to the state's seaward boundary (three miles from the coast except in the Florida panhandle, where it is approximately nine miles), and no distance penalties may be applied to offsets obtained in this zone. *Id.* The third zone is the area landward from the state's seaward boundary, and is the area in which the final rule changed the proposal most substantially. Offsets obtained in this zone are subject to any distance penalties required by the COA; however, for purposes of calculating the distance

between the OCS source and the offset, the OCS source is deemed to be located at the point where a straight line drawn between the source and the offset crosses the state's seaward boundary. *Id.* The purpose of zone 3 was to retain the proposal's intent to avoid penalizing the OCS source for the distance between the OCS source and the seaward boundary, while also preserving distance penalties that otherwise would apply within state boundaries. *Id.*

SUMMARY OF ARGUMENT

EPA's interpretation of section 328 to exclude direct air emission regulation of mobile marine vessels as "OCS sources" -- and instead to provide for inclusion of the emissions from such vessels in the emissions of the OCS source(s) with which the vessels are associated -- clearly is reasonable. First, the statute provides that emissions from marine vessels "shall be considered direct emissions from the OCS source." In addition, the most reasonable construction of the statute's definition of "OCS source" is one which excludes marine vessels in transit. Section 328's definition of OCS source is expressly limited by reference to those sources regulated or authorized under the Outer Continental Shelf Lands Act ("OCSLA"), [43 U.S.C. §§ 1331-1356](#), and the OCSLA does not provide for regulation of marine vessels in transit.

EPA also reasonably interpreted section 328 to require offset provisions that apply the same regulatory treatment -- as opposed to the same literal regulations -- to OCS sources as to onshore sources. To apply the same literal offset regulations to OCS sources as apply to onshore sources, particularly with regard to distance penalties, would result in inequitable treatment of OCS (as compared to onshore) sources, and would insufficiently promote the goal of improving onshore air quality. The offset provisions enacted by the final rule faithfully implement the statutory intent to apply the same regulatory treatment to OCS sources as to onshore sources and are well-supported by the administrative record.

For these reasons, Santa Barbara's challenges to the provisions of the final rule relating to vessels and offsets should be rejected.

STANDARD OF REVIEW

The final rule being challenged was promulgated in accordance with the special rulemaking provisions of section 307(d) of the CAA, [42 U.S.C. § 7607\(d\)](#). Accordingly, judicial review is governed by section 307(d)(9) of the CAA, [42 U.S.C. § 7607\(d\)\(9\)](#). Under this provision, the challenged portions of the final rule may not be set aside unless they are found to be:

- (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (B) contrary to constitutional right, power, privilege, or immunity;
- (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or
- (D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) [pertaining to exhaustion of administrative remedies] has been met, and (iii) the condition of the last sentence of paragraph (8) [pertaining to significance of procedural errors] is met.

[42 U.S.C. § 7607\(d\) \(9\)](#)

The “arbitrary and capricious” standard presumes the validity of agency actions and a reviewing court is to uphold an agency action if it satisfies minimum standards of rationality. [Ethyl Corp. v. EPA](#), 541 F.2d 1, 34 (D.C. Cir.) (*en banc*) cert. denied, 426 U.S. 941 (1976); [Small Refiner Lead Phase-Down Task Force v. EPA](#), 705 F.2d 506, 520-21 (D.C. Cir. 1983). Where EPA has “considered the relevant factors and articulated a rational connection between the facts found and the choices made,” its regulatory choices must be upheld. [Baltimore Gas & Elec. Co. v. Natural Resources Defense Council, Inc.](#), 462 U.S. 87, 105 (1983); [American](#)

[Petroleum Inst. v. EPA](#), 906 F.2d 729, 737 (D.C. Cir. 1990).

With regard to questions of statutory interpretation, in [Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.](#), 467 U.S. 837 (1984), the Supreme Court stated a now-familiar two-part test for review of an agency's interpretation of a statute which it administers. Under the first part of this test, the court must consider whether the statute unambiguously addresses the particular question at issue. If so, “that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.” *Id.* at 842-43. However, if the statute is silent or ambiguous with respect to the specific issue, the court must accept the agency's interpretation if it is reasonable; the agency's interpretation need not represent the only permissible reading of the statute nor the reading that the court might originally have given the statute. *Id.* at 843 & n.11; *see also, e.g., Ohio v. EPA*, 997 F.2d 1520, 1527 (D.C. Cir. 1993); [Inland Lakes Management, Inc. v. NLRB](#) 987 F.2d 799, 805 (D.C. Cir. 1993).

ARGUMENT

I. IN ADDRESSING MARINE VESSELS, EPA PROPERLY INTERPRETED SECTION 328 OF THE CLEAN AIR ACT

Section 55.2 of the OCS final rule provides that marine vessels will only be considered “OCS sources” (and hence subject to direct regulation under the final rule) when they are

- (1) Permanently or temporarily attached to the seabed and erected thereon and used for the purpose of exploring, developing, or producing resources therefrom, within the meaning of section 4(a)(1) of OCSLA [[43 U.S.C. § 1331 et seq.](#)]; or
- (2) Physically attached to an OCS facility, in which case only the stationary sources aspects of the vessels will be regulated.

57 Fed. Reg. at 40,807 (to be codified at 40 C.F.R. § 55.2) (bracketed material in original).

In situations other than these two, emissions from marine vessels servicing or associated with an OCS source are, while at the source or within 25 miles en route to or from the source, considered direct emissions from the source. *Id.* In *18 addition, emissions from marine vessels in these circumstances are also included in the associated source's "potential to emit," which means that these emissions from mobile vessels will be added to the emission inventory upon which PSD and nonattainment new source review is based.^[FN14] Thus, while the final rule does not provide for direct regulation of marine vessels in transit, emissions from such vessels must be taken into account for purposes such as calculating offsets for new sources in nonattainment areas and increment analyses for new sources in PSD areas. See 57 Fed. Reg. at 40,794 (discussion in preamble to final rule); 56 Fed. Reg. at 63,777 (discussion in preamble to proposed rule).

FN14. See note 11, *supra*, for an explanation of the term "potential to emit."

Santa Barbara challenges the final rule's treatment of marine vessels in transit on the basis that EPA's approach allegedly conflicts with the plain meaning and legislative history of section 328. Pet. Br. at 21-29. Santa Barbara argues that section 328 should be read to require direct regulation of marine vessels in transit (as opposed to indirectly regulating such emissions by including vessel emissions in the emissions of the associated OCS facility). *Id.* Conspicuously missing from Santa Barbara's argument, however, is any contention that marine vessels in transit can themselves be considered "OCS sources" under the statute. Santa Barbara also offers no credible *19 explanation of how a source that is not an "OCS source" can be directly regulated under section 328.

As we explain more fully below, Congress explicitly limited direct application of section 328's air pollution requirements to "OCS sources," and explicitly excluded marine vessels in transit from the definition of "OCS source." Rather, Congress set

out an alternative approach for addressing emissions from marine vessels in transit (*i.e.*, that the vessel's emissions be included in the emissions from the associated OCS source), an approach which EPA faithfully followed in the final rule. EPA's action on this issue thus is fully consistent with the statute and should be upheld by the Court.

A. The Final Rule's Treatment of Marine Vessels Is Fully Consistent With the Language of Section 328 of The Clean Air Act.

1. The final rule is consistent with section 328's definition of "CS source."

The definition of "OCS source" in section 328(a)(4)(C) first provides (in pertinent part) that such sources

include any equipment, activity, or facility which -- (i) emits or has the potential to emit any air pollutant, (ii) is regulated or authorized under the Outer Continental Shelf Lands Act [43 U.S.C.A. § 1331 *et seq.*], and (iii) is located on the Outer Continental Shelf or in or on waters above the Outer Continental Shelf.

42 U.S.C. § 7627(a)(4)(C) (bracketed material in original). The definition then goes on to state that *20 [s]uch activities include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation. *For purposes of this subsection, emissions from any vessel servicing or associated with an OCS source, including emissions while at the OCS source or en route to or from the OCS source within 25 miles of the OCS source, shall be considered direct emissions from the OCS source.*

Id. (emphasis added). Moreover, with regard to subpart (ii) of this definition, the Outer Continental Shelf Lands Act provides for federal regulation of "all installations and other devices permanently or temporarily attached to the seabed, which may be erected thereon for the purpose of exploring, developing, or producing resources therefrom, or any

such installation or other device (*other than a ship or vessel*) for the purpose of transporting such resources.” 43 U.S.C. § 1333(a)(1) (emphasis added).

EPA concluded that this statutory language limits the regulation of marine vessels as “OCS sources” under section 328 to: (1) those vessels (such as drill ships, for example) that are permanently or temporarily attached to the seabed and used for the purpose of exploring for, developing, or producing resources; and (2) vessels that are physically attached to an OCS facility (in which case only the stationary source aspects of the vessels will be regulated). 57 Fed. Reg. at 40,793. In other words, EPA’s reading of section 328 (as reflected in the final rule) is that marine vessels in transit are not “OCS sources.” For a *21 number of reasons, this interpretation of the statute should be upheld.

First, and most obviously, the final sentence of section 328’s definition of OCS source directly addresses Congress’ intent regarding the treatment of emissions from marine vessels in transit. As noted above, that sentence provides, *inter alia*, that emissions from marine vessels in transit to or from an OCS source (within 25 miles of the source) “shall be considered direct emissions from the OCS source.” 42 U.S.C. § 7627(a)(4)(C). This explicit statutory directive regarding the treatment of vessel emissions precludes a construction of the statute that would provide for direct regulation of such vessels as OCS sources themselves. *See* 56 Fed. Reg. at 63,778. Had Congress intended marine vessels in transit to themselves be “OCS sources” (or otherwise directly regulated), there would have been no reason for Congress to provide that vessel emissions be included in the emissions from the associated OCS source. Therefore, EPA developed a rule that treated marine vessel emissions as part of the emissions of the associated OCS source, but did not directly regulate marine vessels in transit as OCS sources.

Second, despite Santa Barbara’s arguments to the contrary, EPA reasonably interpreted subpart (ii) of section 328’s definition of “OCS source” (which

cross-references the OCLA) to limit “OCS sources” under section 328 to only those sources which are regulated under the OCSLA. *See* *2257 Fed. Reg. at 40,793 (preamble to final rule); 56 Fed. Reg. at 63,777 (preamble to proposed rule). While Santa Barbara does not challenge EPA’s reading of the OCSLA, it argues that section 328(a)(4)(C)(ii) is merely illustrative in nature, and not a limitation, due to the fact that the definition uses the word “include[s]” instead of “means.” Pet. Br. at 24.

Santa Barbara’s approach is untenable, however, because it would render the definition of OCS source virtually limitless. Clearly the second sentence of the definition -- which states that activities included in the definition “include, but are not limited to, platform and drill ship exploration, construction, development, production, processing, and transportation” -- must be read as illustrative and not limiting in nature. In any event, the third sentence, discussed above, specifically addresses vessel emissions. Thus, unless subparts (i) through (iii) of the first sentence are read as limiting in nature, virtually any “equipment, activit[ies], or facilit[ies]” would constitute OCS sources within the meaning of the statute.

For these reasons, Congress clearly spoke to the issue of how EPA is to treat emissions from marine vessels in the OCS rule, and the final rule is completely consistent with this direction. Moreover, EPA’s broader construction of the definition of OCS source and the rest of section 328 as it relates to marine vessels is clearly permissible and should be upheld in accordance with the second step of the *Chevron* decision.

*23 2. The final rule is also consistent with section 328(a)(1) on the issue of marine vessels.

Santa Barbara also argues that direct regulation of marine vessels in transit is compelled by section 328(a)(1), which provides that OCS sources within 25 miles of a state’s seaward boundary are subject to the same requirements as would be applicable if the source were located in the COA. Pet. Br. at 22.

Santa Barbara contends that since “the plain and ordinary meaning of this language is that all requirements of the COA apply to sources of air pollution on the OCS,” and that since “[n]o exception is made for marine vessels,” then “if the COA has requirements for the control of air pollution from marine vessels in transit, those requirements shall be applied, ‘as if the source were located in the [COA].’” Pet. Br. at 23.

However, the first sentence of section 328(a)(1) expressly states that the requirements of section 328 apply only to “OCS sources,” which is explicitly defined in section 328(a)(4)(C). For this reason, the key question is simply whether the definition of “OCS sources” includes marine vessels in transit. See 56 Fed. Reg. at 63,777-78 (Dec. 5, 1991). As discussed above, the definition of “OCS sources” in section 328(a)(4)(C) clearly excludes marine vessels in transit. Therefore, EPA’s treatment of marine vessels in the final rule is fully consistent with section 328(a)(1) (as well as the remainder of section 328).

***24 B. EPA’s Treatment of Marine Vessels is Fully Consistent With The Legislative History and Purpose of Section 328.**

Despite Santa Barbara’s arguments to the contrary, Pet. Br. at 26, EPA’s construction of section 328 on the issue of marine vessels is confirmed by the statute’s legislative history. The only portion of legislative history cited by Santa Barbara is the following excerpt from the Conference Report:

Marine vessels emissions, including those from crew and supply boats, construction barges, tugboats, and tankers, which are associated with an OCS activity, will be included as part of the OCS facility emissions for the purpose of regulation. Air emissions associated with stationary and in transit activities of the vessels will be included as a part of the facility’s emissions for vessel activities within a radius of 25 miles of the exploration, construction, development, or production location. This will ensure that the cruising emissions from marine vessels are controlled and offset as if they were part of the

OCS facility’s emissions.

136 Cong. Rec. S16,983 (Oct. 27, 1990); Pet. Br. at 26.

Santa Barbara’s quotation of this language is curious, as it is fully consistent with the final rule (and the language of section 328, for that matter). Despite Santa Barbara’s assertion, this legislative history in no way suggests that marine *vessels* in transit should be directly regulated or considered “OCS sources.” Rather, it merely states that the *emissions from marine vessels* associated with an OCS facility “will be included as part of the OCS facility emissions for the purpose of regulation” and that this treatment “will ensure that the cruising emissions from marine vessels are controlled and *25 offset as if they were part of the OCS facility’s emissions.” 136 Cong. Rec. S16,983 (emphasis added). As the emphasized language makes clear, Congress recognized that marine vessels in transit are not themselves regulated as “OCS sources” under the statute, but rather that emissions from such vessels should be treated “as if” they were emissions of the associated OCS source. This is exactly the way in which the final rule treats emissions from marine vessels.

Santa Barbara maintains that including the emissions from marine vessels in transit in the emissions from an associated OCS facility does not “control” air pollution from such vessels and that only direct regulation accomplishes this result. Pet. Br. at 28-29. Thus, Santa Barbara contends that the final rule conflicts with the final sentence of the above-quoted legislative history, which states that section 328 will “ensure that the cruising emissions from marine vessels are controlled and offset as if they were part of the OCS facility’s emissions.” *Id.* at 28. Santa Barbara’s argument lacks merit.

Even if the cited portion of the legislative history is taken at face value, it does not support Santa Barbara’s position. At most, it merely states a general expectation that section 328 will have the result of “controll[ing] and offset[ting]” vessel emissions.

The final rule clearly achieves this general goal. As EPA noted in the preamble to the proposed and final rule and in its response to comments, since the emissions from marine vessels in transit will be included in the *26 emissions of the OCS facility associated with the vessel, these emissions will be accounted for in a variety of ways, such as in offset calculations and impact analyses for the OCS facility. See *57 Fed. Reg. at 40,794* (discussion in preamble to final rule); *56 Fed. Reg. at 63, 777* (discussion in preamble to proposed rule); Response to Comments Document at 25-27, A.R. [FN15] V-C-01 (J.A. at 449-51). As EPA stated in its response to comments on this issue, this treatment of vessel emissions does result in added “control” of emissions. Response to Comments Document at 25-27, A.R. V-C-01 (J.A. at 449-51).

FN15. The abbreviation “A.R.,” as used herein, refers to the docket number of documents from the administrative record.

It appears that Santa Barbara's true concern is that, in its view, direct regulation of marine vessels in transit under Section 328 is a desirable public policy objective. See, e.g., Pet. Br. at 14-15 & n.6, 28 & n.8. However, the choice of how and where to accomplish regulation of marine vessels is for Congress to make, and it clearly chose to authorize such controls under Title II of the Act, not section 328. [FN16] Moreover, even if Congress had not clearly spoken, the agency's approach is entitled to deference. See *Chevron*, 467 U.S. at 864-66.

FN16. Under Title II, Congress provides for the direct regulation of marine vessels (and other “nonroad engines or vehicles”) through federal standards. CAA § 209, 42 U.S.C. § 7543. In general the statute preempts state regulation of vessels, but allows California to obtain authorization from EPA to adopt its own regulations after meeting certain conditions. CAA § 209(e); 42 U.S.C. § 7543(e).

*27 For all of these reasons, the final rule's treat-

ment of marine vessels is completely consistent with section 328, and should be upheld by the Court.

II. THE FINAL RULE'S TREATMENT OF OFFSETS IS FULLY CONSISTENT WITH THE LANGUAGE AND INTENT OF SECTION 328

One of the principal requirements for construction of major new sources or modifications in nonattainment areas is that the source obtain offsetting emission reductions (“offsets”) from other sources prior to construction. See generally pp. 7-8, *supra*. Section 55.5 of the final rule addresses the calculation of offsets for OCS sources. See *57 Fed. Reg. at 40,808*. The final rule creates a uniform system to apply the offset requirements of the various COAs (COAs) in a manner that accounts for the complications of applying these requirements to offshore sources. See generally *56 Fed. Reg. at 63,779* (preamble to proposed rule); *57 Fed. Reg. at 40,796* (preamble to final rule).

As noted earlier, the principal problem faced by EPA in formulating the offsets portion of the final rule involved the application of distance penalties (sometimes also referred to as distance discounting), a common feature of the offset rules in the areas designated as the COAs for OCS sources. In their simplest form, distance penalties reduce the value of a potential offset to the source seeking the offset in a ratio proportionate to the distance the proposed offset is from the source. In Santa Barbara, for example, the “base ratio” for offsets is 1.2:1, and this ratio increases as the distance between the source and the *28 offset increases. [FN17] Pet. Br. at 16, 29. The specific purpose of distance penalties is to encourage the acquisition of offsets from an area as close to the source as possible. See *40 C.F.R. Part 51, App. S*, § IV(D); see also Pet. Br. at 29. The larger purpose of these offset requirements is to control emissions from new sources in nonattainment areas to the greatest degree possible, while still allowing for industrial growth. *40 C.F.R. Part 51, App. S*, § I; see also *supra* n.8 and accompanying text (discussing Emis-

sions Trading Policy Statement).

FN17. For example, assume a COA with a base ratio that is 1.2:1, but that the ratio doubles to 2.4:1 beyond a distance of 15 miles. In this situation, an offset within less than 15 miles of a new source generating 50 tons per year (“tpy”) of a pollutant would need to provide emissions reductions of that pollutant of 60 tpy (1.2 x 50). Beyond 15 miles, that offset would need to provide emissions reductions of 120 tpy (2.4 x 50).

The specific problem with the direct application of onshore distance discounting rules to offshore sources is that such an approach would have the result of encouraging the acquisition of emissions reductions from the sources closest to the offshore source, but not necessarily closest to the onshore nonattainment area which is to be protected. *See* 57 Fed. Reg. at 40,796 (preamble to final rule). In addition, direct application of onshore distance discounting rules to offshore sources would also penalize offshore sources by making the “cost” of onshore offsets prohibitive. *Id.* Such a result would conflict with Congress' intent in enacting section 328, which was to “minimize differences in air pollutant regulation ... between OCS sources and sources located in the corresponding onshore area.” 136 *29 Cong. Rec. S16,983 (Oct. 27, 1990) (Conference Report). In addition, it would also conflict with the larger purpose of section 328, which is to protect and improve onshore ambient air quality. 57 Fed. Reg. at 40,796.

To address this problem, the OCS final rule incorporates the general offset requirements of the onshore areas but specifically establishes the procedures for applying the distance penalty requirements of the COA to OCS sources. To that effect, the OCS rule provides that while all offsets “shall be obtained based on the requirements imposed in the COA,” 40 C.F.R. § 55.5(d), the application of such requirements is to be in accordance with certain provisions designed to address the geographic con-

siderations mentioned above.

The final rule creates three zones for the purpose of applying distance penalties: (1) seaward of the OCS source (“zone 1”); (2) the area between the OCS source and the state seaward boundary (which is three miles from the coast in California) (“zone 2”); and (3) the area from the state seaward boundary extending inland (“zone 3”). 40 C.F.R. §§ 55.5(d)(3-5). Offsets obtained in zone 1 are subject to all the offset requirements of the COA, including any distance penalties. *Id.* § 55.5(d)(5). Offsets obtained in zone 2 are obtained at the base ratio required in the COA but no distance penalties apply. *Id.* § 55.5(d)(3). Offsets obtained in zone 3 are also subject to all the offset requirements of the COA, including any distance penalties. *Id.* § 55.5(d)(4). However, for the purpose of *30 calculating the distance between the OCS source and the source of offsets in zone 3, it is assumed that the OCS source is located at the state seaward boundary (as explained above, the state seaward boundary for most states is three miles from the coast). *Id.* Finally, the rule provides that no offset ratio applied to offshore sources shall be higher than the highest offset ratio required onshore provided that a net air quality benefit is obtained. 40 C.F.R. § 55.5(d)(1).^[FN18]

FN18. Other aspects of the offset provisions of the final rule, not directly relevant to Santa Barbara's challenge, pertain to the locations from which offsets may be obtained. Final Rule §§ 55.5(d)(6-7).

Santa Barbara's challenge rests entirely on an argument that the plain meaning of section 328 requires application of exactly “the same” offset provisions to OCS sources as would apply to onshore sources in the COA, and that EPA's approach violates this statutory directive. Pet. Br. at 29-31. However, Santa Barbara's rigid reading of section 328 is mistaken. Further, Santa Barbara ignores the rationale for offsets and the inequitable situation that would occur if the COA offset rules were directly transferred to the OCS, concepts Santa Barbara recognized in its own comments in the development of

the OCS final rule.

We now demonstrate that the final rule should be upheld by the Court as being fully consistent with section 328 and well-supported by the administrative record.

***31 A. The Language of Section 328 Supports EPA's Approach to Offsets.**

In pertinent part, section 328(a)(1) provides that for sources within 25 miles of the states' seaward boundaries, the requirements of the OCS rule (including offset requirements) "shall be the same as would be applicable if the source were located in the corresponding onshore area..." [42 U.S.C. § 7627\(a\)\(1\)](#) (emphasis added). In EPA's view, the directive of the above-quoted portion of the statute is that the regulatory treatment of the OCS source should be the same as if the source were located onshore in the same COA -- not that the actual regulations be precisely the same in all respects.

This reading of the statute is particularly appropriate with regard to offsets and distance penalties, where literal application of "the same" onshore regulations to OCS sources would result in regulatory treatment of OCS sources that is quite unequal. As we explain in more detail under Point B, *infra*, direct application of distance penalties for onshore sources to offshore sources without considering geographic factors will achieve results that are contrary to the statute and its legislative intent. As stated in the Conference Report on the 1990 amendments, section 328 was to "minimize differences in air pollutant regulation which currently exist between OCS sources and sources located in the corresponding onshore area." 136 Cong. Rec. S16,983 (Oct. 27, 1990). Moreover, as will be discussed in more detail below, the approach to offsets adopted in the final rule is also consistent with the broader intent of ***32** section 328 to protect and improve onshore air quality, and with the intent of offsets in general, which is to improve air quality in nonattainment areas. *See generally* [57 Fed. Reg. at 40,796](#).

In short, Congress did not expressly address the precise manner in which the unique geographic factors involved in calculating appropriate offsets for offshore sources should be dealt with. In light of this lack of direction, EPA reasonably read the statute as providing that the regulatory impacts of offset provisions should be the same for onshore and offshore sources. This reading of section 328 as it applies to offset requirements is permissible and should be upheld.

B. The Final Rule's Approach for Applying The Same Offset Requirements to OCS Sources As Would Be Applicable If the Source Were Located in the Corresponding Onshore Area Is Reasonable and Well-Supported By The Administrative Record.

The purposes of section 328 to equalize the regulatory treatment of OCS and onshore sources and to protect ambient air quality standards onshore, is reflected in the statutory requirement that the air pollution requirements to be applied to OCS sources within 25 miles of a state's seaward boundary "shall be the same as would be applicable if the source were located in the corresponding onshore area" [42 U.S.C. § 7627\(a\)\(1\)](#). The treatment of offsets in the final rule was the culmination of a thorough administrative process which evaluated numerous options before settling on an approach which best effectuated these goals.

***33** EPA convened workshops and solicited extensive comments prior to issuance of the proposed OCS rule. During this period, several parties -- including Santa Barbara -- commented on the potential inequity of directly applying distance penalties, which were developed by local districts for onshore sources, to offshore sources. For example, the Western States Petroleum Association -- noted that application of existing distance factors could result in an offset ratio of 7:1, which is much higher than the equivalent ratio for onshore sources. A.R. II-D-21 (J.A. at 37, 47). The Minerals Management Service of the U.S. Department of the Interior noted that although the impact of emissions from an OCS

source is lower for the COA than those emissions of an onshore source because of the OCS source's distance from shore, the OCS source would suffer a greater penalty because of the OCS source's distance from sources of potential offsets. A.R. II-F-06 (J.A. at 141, 142). The U.S. Department of Energy expressed concern that no future OCS production would occur off the California coast due to the high level of offsets that would be required for OCS sources if the onshore requirements were applied under their literal terms. A.R. II-F-05 (J.A. at 131).

In its initial comments to EPA, Santa Barbara acknowledged that alternatives to direct application of onshore distance penalties to OCS sources might be appropriate. A.R. II-D-06 (J.A. at 29, 35). One specific alternative that Santa Barbara suggested would use “ratios based on the distance between *34 the providing source and the nearest point on land from the source being offset.” *Id.*

In response to these expressed concerns, EPA drafted a proposed rule that did not permit distance penalties if offsets were obtained on the landward side of the OCS source. *See 56 Fed. Reg. at 63,779, 63,788.* EPA reasoned that since the purpose of the OCS Rule is to protect onshore ambient air quality, offsets obtained closer to shore would have a greater positive impact on air quality. *Id.* at 63,779.

Some commentators on the proposed rule continued to support a relatively broad restriction on distance penalties landward of the OCS source.^[FN19] Many others, however, advocated a middle ground. For example, the Ventura County Air Pollution Control District (“APCD”) suggested that in order to protect OCS sources from unreasonably high offset ratios, EPA should prohibit discounting associated with the distance from the OCS source to the state seaward boundary, but should not prohibit distance discounting from the seaward boundary to the source of the offsets. A.R. IV-D-47 (J.A. at 169, 172-73). Similarly, the California Air Resources Board (“CARB”) commented that distance *35 discounting may be necessary for some onshore sources of emission reductions, and suggested that

the restriction on distance penalties should apply only in the area between the proposed OCS source and the state's seaward boundary. A.R. IV-D-49 (J.A. at 397, 402). The San Diego County APCD also suggested a similar approach. A.R. IV-D-50 (J.A. at 389, 390).

FN19. The Minerals Management Service (MMS) commented that based on its modeling, distance penalties were not necessary for any OCS sources because the normal offset ratio of 1.2:1 would provide net air quality benefits to onshore areas even under the worst meteorological conditions. *See A.R. IV-H-11 (J.A. at 419, 419-20).* The MMS also stated that distance discounting was not necessary to reduce ozone pollution because of the regional nature of ozone pollution. *Id.* MMS' recommendation was to retain the bar on distance penalties landward of the OCS source, except in those situations where the proposed offset would be outside the onshore nonattainment area. *Id.*

As demonstrated in the administrative record, Santa Barbara submitted two sets of comments on the proposed OCS Rule. In both, Santa Barbara objected to the restriction on distance penalties. A.R. IV-D-20 (J.A. at 177, 179), IV-D-41 (J.A. at 1, 3-5). At a meeting held on April 8, 1992, Santa Barbara indicated that it would prefer the OCS final rule simply to follow the onshore rule. However, Santa Barbara also suggested a compromise proposal that would eliminate distance discounting for the distance from the OCS source to the state seaward boundary by assuming that the OCS source is located at the state boundary for purposes of calculating offsets. A.R. IV-D-85 (J.A. at 409, 413). Santa Barbara indicated that in its view, the compromise approach “[i]n the vast majority of cases ... will ensure the offsets mitigate the maximum area of onshore impact.” A.R. IV-D-85 (J.A. at 413).

EPA drafted the final OCS Rule with its three zones for offsets in response to such comments from

Santa Barbara, other local APCDs, and CARB. 57 Fed. Reg. at 40,796. After review of the comments, EPA concluded that the blanket elimination of distance penalties landward of the OCS source in the proposed OCS *36 rule was inadequate to achieve a net air quality benefit for the onshore area consistently. *Id.* However, EPA retained the elimination of distance penalties for the distance between the OCS source and the state's seaward boundary. This latter aspect equalizes the regulatory treatment of onshore and offshore sources (and promotes air quality improvement in the onshore area) because it eliminates the disincentive for OCS sources to obtain offsets from the landward side of the OCS source. *Id.*

This equalization is achieved by the restriction on distance penalties for zone 2, the area between the proposed OCS source and the state's seaward boundary, as suggested by the comments of CARB and the local agencies discussed above. The purpose of the OCS Rule -- to protect the ambient air quality of the onshore area -- would not be accomplished if the distance penalties were identical for offsets obtained in zone 1 (the area seaward of the proposed OCS source) and zone 2. If distance penalties were identical, owners of a proposed source would seek the closest source of offsets regardless of whether the offset was landward or seaward of the source. If the closest offset is located on the seaward side of the proposed source, the ambient air quality in the onshore area is the loser in the transaction, as the most valuable offset to the source would be further from the onshore nonattainment area. As a result, the source's *37 incentive to choose an offset close to, or even within, the nonattainment area would be lost.^[FN20]

FN20. By way of example, assume that a proposed OCS source, "A", is to be constructed 20 miles from the California coast and that there are three potential offset providers (all, for the sake of simplicity, oriented along a straight line relative to each other). Provider source "B" is located two miles inside the onshore nonattain-

ment area and 22 miles from "A"; provider source "C" is located 4 miles seaward from the California coast and 16 miles from "A"; and provider source "C" is located 28 miles from the California coast and 8 miles (seaward) from "A". If distance penalties applied equally to zones 1, 2 and 3 the wrong signal would be sent: the owner of source "A" would have an incentive to obtain the offsets from "D" as opposed to either "B" or "C" because the offset requirement from "D" would be the smallest. As a result, the offset to be provided would have a less beneficial impact on onshore ambient air quality.

As the above discussion makes clear, EPA carefully crafted section 55.5(d) of the OCS final rule to ensure equity between OCS and onshore sources. The offset provisions of the OCS Rule are a reasonable application of section 328 that ensures a net air quality benefit for the onshore area. Accordingly, the offset provisions should be upheld by the Court.

38CONCLUSION

For all the above reasons, Santa Barbara's challenges to the vessels and offsets provisions in the OCS final rule should be denied.

Appendix not available.

SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT, Petitioner, v. Carol M. BROWNER, Administrator, U.S. Environmental Protection Agency; and U.S. Environmental Protection Agency, Respondents, WESTERN STATES PETROLEUM ASSOCIATION, Intervenor.
1994 WL 16777199 (C.A.D.C.) (Appellate Petition, Motion and Filing)

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