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## RULE 1309

### Emission Reduction Credit Banking

#### (A) General

##### (1) Purpose

- (a) The purpose of this Rule is to implement those provisions of Division 26, Part 3, Chapter 6 (commencing with §40700) of the California Health & Safety Code which require the establishment of a system by which all reductions in the emission of air contaminants (which are to be used to offset certain future increases in emissions) shall be banked prior to use to offset future increases in emissions.
- (b) This Rule is not intended to recognize any preexisting right to emit air contaminants, but to provide a mechanism for the District to recognize the existence of reductions of air contaminants that can be used as Offsets, and to provide greater certainty that such Offsets shall be available for emitting industries.

##### (2) Applicability

- (a) This Rule shall apply to the creation, and Banking of all Emission Reduction Credits (ERCs) within the District.
- (b) Any Person, including the District, may Bank, own, use, sell or otherwise transfer, either in whole or in part, ERCs which are created and owned pursuant to this regulation subject to the applicable requirements of Federal, State, or District law, rule, order, permit or regulation.

##### (3) Prohibitions

- (a) No reduction in the emission of Regulated Air Pollutants may be used as Offsets for future increases in the emission of Regulated Air Pollutants unless such reductions have been Banked pursuant to this Rule.
  - (i) Notwithstanding the above SERs created in the same permitting action and within the same Facility are not required to be Banked

so long as such reductions satisfy all the applicable criteria contained in District Rules 1304(C) and 1305.

(B) Emission Reduction Credit Registry

(1) Establishment of Emission Reduction Credit Registry:

- (a) An Emission Reduction Credit Registry is hereby established for the District.
  - (i) This shall be known as the Antelope Valley Air Quality Management District Emission Reduction Credit Registry (AVAQMD ERC Registry).
- (b) The AVAQMD ERC Registry shall consist of the following:
  - (i) ERCs created and issued after July 1, 1997 which have met all the following requirements:
    - a. A timely and complete application for ERCs has been received pursuant to subsection (C)(1) below; and
    - b. The amount of ERCs have been calculated pursuant to the provisions of District Rule 1304 and approved by the APCO pursuant to subsection (C)(3) below; and
    - c. The amount, ownership and expiration date if any of the ERCs has been entered into the Registry; and
    - d. A Certificate evidencing the amount, type and class of ERCs has been properly issued; and
    - e. The ERCs have not yet been used as Offsets or expired.
  - (ii) ERCs banked prior to July 1, 1997 under the applicable Rules of the SCAQMD and which meet the following requirements:
    - a. The ERCs have been properly transferred to the AVAQMD ERC Registry pursuant to subsection (E)(4) below; and
    - b. The ERCs have not yet been used as Offsets or expired.
- (c) ERCs contained in the AVAQMD ERC Registry are Permanent until:
  - (i) They are used by the owner; or
  - (ii) They are used by any person to whom the ERC has been transferred; or
  - (iii) They expire.

- (d) Subsequent changes in District Rules or Regulations to require a type of emission reduction which has previously been Banked pursuant to this Rule shall not reduce or eliminate an ERC generated from that type of emission reduction.
  - (e) Emission reductions are eligible to become ERCs if such reductions are Real, Surplus, Permanent, Quantifiable, and Enforceable; and are calculated pursuant to the provisions of District Rule 1304(D) and:
    - (i) The emissions reduction is the result of a Modification or limitation of use of existing Emissions Unit(s) such that after the reduction is made the Emissions Unit(s) remains in service with an authority to construct or permit to operate pursuant to Regulation II; or
    - (ii) The emission reduction is the result of a shutdown of Emission Unit(s) and there will likely be no replacement Emission Unit(s) at the same Facility unless the emissions from any replacement Emission Unit(s) is completely offset under the provisions of this Regulation.
- (2) Contents of Registry:
- (a) All ERCs contained in the AVAQMD ERC Registry shall be individually listed.
  - (b) The registry entry for each ERC shall contain the following information:
    - (i) The name, address, and telephone number of the owner(s) of the ERC;
    - (ii) The amount and pollutant of the approved ERC on a pollutant by pollutant basis;
    - (iii) The expiration date of the approved ERC, if any;
    - (iv) Any information regarding liens, encumbrances and other changes of record.
  - (c) The registry shall contain an entry for each ERC until such ERC is used, expires or is otherwise altered by operation of law.
- (3) ERC Certificate:
- (a) All ERCs issued pursuant to this regulation shall be evidenced by a Certificate issued by the District and signed by the APCO.

- (b) The Certificate shall contain the same information as is contained in the registry entry for the issued ERC pursuant to subsection (B)(2)(b) above.
  - (c) The APCO shall prescribe the form of the Certificate.
  - (d) ERC Certificates shall not constitute instruments, securities or any other form of property.
- (4) Ownership of ERCs:
- (a) Initial title to approved ERCs shall be held by the owner(s) of the Emissions Unit(s) which produced the reduction in Regulated Air Pollutants, in the same manner as such owner(s) hold title to the facility in which the Emissions Unit(s) is located.
  - (b) Title for any approved ERC which has been transferred, in whole or in part, by written conveyance or operation of law from one person to another shall be held by the owner(s) in the manner indicated in the written conveyance or as indicated by the operation of law.
  - (c) The owner(s) of an ERC as listed in the registry and on the ERC Certificate shall have the exclusive right to use such ERCs and/or to authorize such use.

(C) Issuance of Emission Reduction Credits

- (1) Applications for ERCs:
- (a) ERCs shall be applied for, in writing, by the owner or operator of the Emissions Unit(s) from which the emission reduction has occurred or will occur, to the APCO.
  - (b) Applications for ERCs shall be clearly identified as such and shall contain the following:
    - (i) The name, address, and telephone number of the owner(s) of the Emissions Unit(s) and a contact person if necessary.
    - (ii) Information sufficient to identify the source and/or causation of the emission reductions.
    - (iii) Information sufficient to allow the calculations set forth in District Rule 1304(D) to be performed.

- (c) No application for ERCs will be processed until the applicable fees as specified in District Rule 301 have been paid.
- (d) Applications for ERCs shall be submitted in a timely manner determined as follows:
  - (i) For emission reductions which occurred after July 1, 1997, an application for ERCs shall be submitted within 6 months after any of the following:
    - a. District issuance of an ATC; or
    - b. District issuance of a modified PTO; or
    - c. District cancellation of a previously existing ATC or PTO; or
    - d. for emissions units not subject to permitting requirements, the completion of the Modification or shutdown and execution of the document(s) required by subsection (D)(3)(c).
  - (ii) Notwithstanding subsection (C)(1)(d)(i) above, a timely application for a Military Base subject to closure or realignment shall be determined pursuant to the provisions of California Health & Safety Code §40709.7.
- (e) Applications for ERCs may be withdrawn at any time by the applicant.
  - (i) An applicant who withdraws an application may be entitled to a partial refund of fees as set forth in District Rule 301.
  - (ii) A withdrawn application for ERCs does not preclude an applicant from later submitting an application for ERCs based upon the same emissions reductions as those contained in the withdrawn application as long as such resubmitted application is timely in accordance with subsection (C)(1)(d) above.
- (f) Information contained in an application for ERCs shall be considered confidential when:
  - (i) The information is a trade secret or otherwise confidential pursuant to California Government Code §6254.7; or
  - (ii) The information is entitled to confidentiality pursuant to 18 U.S.C. §1905; and
  - (iii) The information is clearly marked or otherwise identified by the applicant as confidential.

- (2) Determination of Completeness:
- (a) The APCO shall determine if the application is complete no later than 30 days after the receipt of the application, or after such longer time as both the applicant and the APCO may agree upon in writing.
    - (i) An application is complete when it contains the information required by subsection (C)(1)(d) above.
  - (b) Upon making this determination, the APCO shall notify the applicant, in writing, that the application has been determined to be complete or incomplete.
  - (c) If the application is determined to be incomplete:
    - (i) The notification shall specify which part of the application is incomplete and how it can be made complete; and
    - (ii) The applicant for ERC shall have 30 days to submit the additional information, unless another time period is specified by the APCO in writing.
    - (iii) The applicant for an ERC may request in writing, and the APCO may grant for good cause shown, extension(s) of time for submission of the additional information. Such request and any extension(s) granted shall be in writing.
    - (iv) If the applicant does not submit the additional information in writing within the time period specified or extended in writing by the APCO the application shall be deemed withdrawn by the applicant.
    - (v) The APCO shall thereafter notify the applicant in writing that the application has been deemed withdrawn pursuant to this subsection.
  - (d) A determination of incompleteness which results in an application being deemed withdrawn may be appealed to the Hearing Board pursuant to section (G) below.
- (3) Calculation of ERCs:
- (a) Calculation of the ERCs shall be performed pursuant to the provisions of District Rule 1304(D).

(4) Proposed ERCs:

- (a) Within 30 days after the application for ERCs has been determined to be complete, or after such longer time as both the applicant and the APCO may agree upon in writing, the APCO shall determine, in compliance with the standards set forth in section (D) below, to issue or deny the ERCs.
- (b) The APCO shall notify the applicant in writing of the determination.
  - (i) If the determination is to issue ERCs then the notification shall include the amount and type of the ERCs proposed to be issued; or
  - (ii) If the determination is to deny the ERCs then the notice shall include an explanation of the reason for the denial.
- (c) After the APCO has determined to issue ERCs, the information submitted by the applicant, the analysis, and determination shall transmit to CARB and the USEPA regional office within 10 days or no later than the date of publication of the notice of the preliminary determination if the amount of ERCs proposed to be granted are greater than any of the following amounts:

| <u>Pollutant</u> | <u>ERC Notification to<br/>CARB/USEPA Threshold</u> |
|------------------|-----------------------------------------------------|
| NO <sub>x</sub>  | 14,600 lbs/yr <b>or</b> 40 lbs/day                  |
| SO <sub>x</sub>  | 21,900 lbs/yr <b>or</b> 60 lbs/day                  |
| ROC              | 10,950 lbs/yr <b>or</b> 30 lbs/day                  |
| PM <sub>10</sub> | 10,950 lbs/yr <b>or</b> 30 lbs/day                  |
| CO               | 80,300 lbs/yr <b>or</b> 220 lbs/day                 |
| H <sub>2</sub> S | 20,000 lbs/yr <b>or</b> 54 lbs/day                  |
| Pb               | 1,200 lbs/yr <b>or</b> 3 lbs/day                    |

(5) Public Notice and Comment:

- (a) After the APCO has determined to issue ERCs, the APCO shall:
  - (i) Produce a notice containing all the information contained in subsection (C)(5)(c) below; and
  - (ii) Publish the notice by posting on the District's website; and

- (iii) Send a copy of the notice to all persons who are included on a list of persons requesting notice, on file with the District;
  - (iv) Provide notice by other reasonable means, if such notice is necessary to assure fair and adequate notice to the public.
- (b) The notice shall provide the following:
- (i) The name and address of the applicant and the facility generating the emissions reductions, if different;
  - (ii) The amount of ERCs proposed to be issued on a pollutant by pollutant basis;
  - (iii) A statement indicating the availability of documents and a location where the public may obtain or inspect the decision and supporting documentation including, but not limited to, the name, address and telephone number of a person from whom additional information may be obtained; and
  - (iv) A statement providing at least a 30 days from the date of publication of the notice in which interested persons may submit written comments to the District regarding the proposed issuance of the ERCs.
  - (v) A brief description of the comment procedures and deadlines; and
  - (vi) Information regarding obtaining review of the decision pursuant to section (G) below; and
- (c) The APCO shall accept and consider all germane and nonfrivolous comments which are received during the comment period.
- (d) The APCO shall include all accepted comments with the records regarding the issuance of the ERCs and shall retain such records for a period of at least 5 years.
- (6) Issuance of ERCs:
- (a) Upon the expiration of the public comment period; after review of comments accepted, if any; and upon payment of the appropriate fee, if any, the APCO shall issue the ERCs by including the appropriate information in the registry and issuing a Certificate.
  - (b) The APCO shall provide written notice of the final action to the applicant and to CARB and USEPA if the preliminary determination was sent to such agencies pursuant to subsection (C)(4)(c) above.

(D) Standards for Granting ERCs

- (1) ERCs shall be Real, Surplus, Permanent, Quantifiable, and Enforceable.
- (2) ERCs shall only be granted for emissions reductions which are not otherwise required by Federal, State or District law, rule, order, permit or requirement.
- (3) ERCs shall only be granted if the applicable changes to the appropriate permits have occurred or other enforceable documents have been submitted as follows:
  - (a) If the proposed ERCs are the result of a Modification or limitation of use of existing Permit Unit(s), the owner and/or operator has been issued revised ATCs PTOs containing Federally Enforceable conditions reflecting the Modification and/or limitations has been issued.
  - (b) If the proposed ERCs are the result of a shutdown of Permit Unit(s), the owner and/or operator has surrendered the relevant permits and those permits have been voided.
    - (i) The specific Permit Unit(s) for which the permits were surrendered shall not be repermited within the District, unless the emissions thereof are completely offset pursuant to the provisions of this Regulation.
  - (c) If the proposed ERCs are the result of a modification of Emission Unit(s) which did not have a District permit, the owner and/or operator has obtained a valid District permit or provided a contract enforceable by the District Federally Enforceable limitations on the Emissions Unit(s).
  - (d) If the proposed ERCs are the result of the application of a more efficient control technology to Emission Unit(s), the owner and/or operator has or obtains a valid District PTO for both the underlying Emissions Unit and the new control technology which contains Federally Enforceable limitations reflecting the reduced emissions.
- (4) If the proposed ERC originates from a previously unpermitted Emission Unit(s), no ERCs may be granted unless the historical emissions from that unit are included in the District's emissions inventory.

(E) Transfer, Encumbrance, and Readjustment of ERCs

- (1) ERCs may be transferred in whole or in part by written conveyance or by operation of law from one person to another in accordance with the provisions contained in this section.
- (2) Voluntary Transfer of Ownership.
  - (a) A voluntary transfer of ownership in whole or in part shall be performed according to the following procedure:
    - (i) The owner(s) of the ERC may file a request for transfer of ownership with the APCO. Such request shall include:
      - a. Information regarding the new owner of the ERC sufficient for entry in the registry.
      - b. An executed copy of the instrument transferring the ERC or a memorandum describing the transaction which transfers the ERC which is signed by all parties to the transaction.
      - c. The purchase price, if any, of the ERCs in terms of total cost on a pollutant by pollutant purchased basis.
    - d. The existing ERC Certificate(s) for the ERCs to be transferred.
    - (ii) Upon payment of the appropriate fee as set forth in District Rule 301, the APCO shall cancel the existing ERC Certificate(s) and issue new certificate(s) in the name of the new owner and indicate the transfer in the Registry.
- (3) Involuntary Transfer of Ownership
  - (a) An involuntary transfer of ERCs shall be performed pursuant to the following procedure:
    - (i) The transferee shall file with the District a certified copy of the document effecting the transfer. The transferee shall certify that the document represents a transfer which is final for all purposes.

- (ii) Upon payment of the appropriate fee as set forth in District Rule 301, the APCO shall demand the original ERC Certificate from the original owner.
    - a. Upon the surrender of the existing ERC Certificate to the District or after 90 days (whichever comes first), the existing ERC Certificate shall be considered cancelled, and the APCO shall issue a new ERC Certificate and indicate the involuntary nature of the transfer in the registry.
  - (iii) The APCO shall thereafter not allow the use or subsequent transfer of the ERC by the original owner.
- (4) Transfer of ERCs Banked Prior to July 1, 1997.
  - (a) ERCs which were created within the area which is now under the jurisdiction of the District and which were properly banked prior to July 1, 1997 pursuant to the applicable rules of the SCAQMD may be transferred to the AVAQMD ERC Registry according to the following procedure:
    - (i) The owner of the ERCs shall submit a request to include the ERCs in the AVAQMD ERC Registry by:
      - a. Requesting such inclusion in writing; and
      - b. Surrendering the ERC certificate or other evidence of the ERCs obtained from the SCAQMD.
    - (ii) Upon receipt of the request and documentation the APCO shall:
      - a. Notify the SCAQMD in writing of the request, the intent to include such ERCs in the AVAQMD ERC Registry, and request that the SCAQMD remove such ERCs from its bank.
      - b. The APCO shall, at the request of the SCAQMD, submit the original certificate and/or documentation which was surrendered to effectuate such removal.
      - c. Within 90 days of such notification, upon the submission of the original certificate and/or documentation or upon receipt of notification from the SCAQMD that such ERCs have been removed from its bank, whichever occurs earlier, the APCO shall issue a new certificate(s) in the name of the owner and include the ERCs in the Registry.
  - (b) ERCs which were created which were properly banked prior to July 1, 1997 pursuant to the applicable rules of the SCAQMD and which are owned by an owner/operator located within the jurisdiction of the District

may be transferred to the AVAQMD ERC Registry according to the following procedure:

- (i) The owner of the ERCs shall submit a request to include the ERCs in the AVAQMD ERC Registry by:
    - a. Requesting such inclusion in writing; and
    - b. Surrendering the ERC certificate or other evidence of the ERCs obtained from the SCAQMD.
    - c. Paying the applicable fee contained in District Rule 301.
  - (ii) Upon receipt of the request and documentation the APCO shall:
    - a. Notify the SCAQMD in writing of the request, the intent to include such ERCs in the AVAQMD ERC Registry, and request that the SCAQMD remove such ERCs from its bank.
    - b. The APCO shall, at the request of the SCAQMD, submit the original certificate and/or documentation which was surrendered to effectuate such removal.
    - c. Within 90 days of such notification, upon the submission of the original certificate and/or documentation or upon receipt of notification from the SCAQMD that such ERCs have been removed from its bank, whichever occurs earlier, the APCO shall issue a new certificate(s) in the name of the owner and include the ERCs in the Registry.
    - d. ERCs transferred pursuant to this subsection shall meet all requirements of California Health and Safety Code 40709.6 either at the time of the transfer or upon use.
- (c) ERCs once transferred to the AVAQMD Registry pursuant to this subsection may not thereafter be utilized within the SCAQMD
- (4) Other Encumbrances of ERCs
- (a) Other encumbrances may be placed upon ERCs according to the following procedure:
    - (i) The holder of the encumbrance shall file with the District a certified copy of the final document creating the encumbrance.
    - (ii) Upon payment of the appropriate transfer fee as set forth in District Rule 301, the APCO shall indicate the encumbrance in the Registry.
  - (b) Thereafter the APCO shall not allow the use or subsequent transfer of the ERC by the owner without receipt of a certified copy of the satisfaction of

the encumbrance or by the removal of the incumbrance by its holder of the encumbrance.

(5) Readjustments of ERCs

(a) Readjustment of ERCs shall be processed as follows:

- (i) The owner of the ERC shall file an application to adjust the ERC.
- (ii) The APCO shall determine if the adjustment of the ERC is warranted and the amount of such adjustment pursuant to the provisions of District Rule 1304(D)(4).
- (iii) After the APCO has determined the amount of the adjustment, upon surrender of the prior ERC Certificate, the APCO shall issue an adjusted ERC Certificate to the owner.

(6) Any transfer of an ERC shall not modify or otherwise alter the requirements contained in a permit or contract which render the ERC Real, Surplus, Permanent, Quantifiable, and Enforceable.

(7) Notwithstanding any other provision of law, conflicting interests in ERCs shall rank in priority according to the time of filing with the District.

(F) Utilization of ERCs

(1) Unexpired ERCs may be used as Offsets in accordance with the provisions of Rule 1305.

(G) Appeal of the Incompleteness, Granting or Denial of ERCs

- (1) If an application for ERCs is deemed withdrawn pursuant to subsection (C)(2)(c)(iv) the applicant may, within 30 days of the date the application is deemed withdrawn, petition the District Hearing Board for a hearing on whether the application as submitted was incomplete.
- (2) An applicant for ERCs may, within 30 days after receipt of the notice of denial of ERCs, petition the District Hearing Board for a hearing on whether the application for ERCs was properly denied.
- (3) Any person who has requested notice or any aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in the ERC action may, within 30 days after the APCO's decision, the mailing of the notice pursuant to subsection

(C)(5)(a)(ii), or the publication of the notice pursuant to subsection (C)(5)(a)(i) whichever is applicable, petition the District Hearing Board for a hearing on whether the ERCs were properly issued.

- (3) The procedural provisions applicable to such a hearing shall be the same as those used for hearings regarding the denial of a permit application pursuant to California Health & Safety Code §§42302 and or 42302.1 as applicable.

[SIP: See AVAQMD SIP table at <https://avaqmd.ca.gov/rules-plans>]