

ANTELOPE VALLEY AIR QUALITY MANAGEMENT DISTRICT

RULE 1309 -- EMISSION REDUCTION CREDITS

(Adopted: 09/10/82; Amended: 12/03/82; Amended: 07/12/85

Amended: 06/28/90 ; Amended: 05/03/91; Amended: 08/13/93

Amended: 12/07/95; Amended: 03/20/01

(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, banking and use 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 air contaminants may be used to offset future increases in the emission of air contaminants, except as provided in subsection (1)(a)(i) below, unless such reductions have been Banked pursuant to this Rule.

- (i) Notwithstanding the above, emissions reductions proposed to offset simultaneous emissions increases within the same Facility are not required to be Banked prior to use as Offsets so long as such reductions satisfy all the applicable criteria contained in District Rules 1304 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 District Emission Reduction Credit Registry (AVAPCD ERC Registry).

- (b) The AVAPCD 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 and approved by the APCO pursuant to subsection (C)(3) below and District Rule 1304; 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 South Coast Air Quality Management District and which meet the following requirements:

- a. The ERCs have been properly transferred to the AVAPCD 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 AVAPCD 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 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 AERs as defined in District Rule 1301(B) 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 equipment such that after the reduction is made the equipment remains in service with an authority to construct or permit to operate pursuant to Regulation II - Permits or Regulation XXX - Federal Operating Permits; 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) must be completely offset under the provisions of District Rule 1305.
- (2) Contents of Registry:
- (a) All ERCs contained in the AVAPCD 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 type of approved ERC;
 - (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..
 - (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 emission of air contaminants, in the same manner as such owner(s) hold title to the facility in which the emissions unit 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 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 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 accepted 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 six (6) months after any of the following:
 - a. District issuance of an Authority to Construct pursuant to District Regulation II - Permits; or
 - b. District issuance of an Authority to Construct pursuant to Regulation XIII - New Source Review; or
 - c. District issuance of a modified permit pursuant to Regulation II - Permits; or
 - d. District cancellation of a permit pursuant to Regulation II - Permits; or
 - e. for emissions units not subject to permitting requirements, the completion of the Modification or shutdown and execution of the document required by subsection (D)(3)(c).
 - (ii) Notwithstanding subsections (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 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) The confidentiality of trade secrets contained in an application for ERCs shall be considered in accordance with Government Code §6254.7.
- (2) Determination of Completeness:
- (a) The APCO shall determine if the application is complete no later than thirty (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.
 - (i) If the application is determined to be incomplete:
 - a. The notification shall specify which part of the application is incomplete and how it can be made complete; and [
 - b. The applicant for ERC shall have thirty (30) days to submit the additional information, unless another time period is specified by the APCO in writing.
 - c. 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.
 - d. 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.
 - e. The APCO shall thereafter notify the applicant in writing that the application has been deemed withdrawn pursuant to this subsection.
 - (c) 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 ERCs shall be performed pursuant to the provisions of District Rule 1304(D).

- (4) Proposed ERCs:
 - (a) Within thirty (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.
 - (i) The APCO shall notify the applicant in writing of the determination.
 - a. If the determination is to issue ERCs then the notice shall include the amount and type of the ERCs proposed to be issued; or
 - b. If the determination is to deny the ERCs then the notice shall include an explanation of the reason for the denial.
 - (ii) The information submitted by the applicant and the APCO's analysis shall be transmitted to the California Air Resources Board and the USEPA regional office 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 CARB/USEPA Threshold</u>
NO _x	14,600 lbs/yr or 40 lbs/day
SO _x	21,900 lbs/yr or 60 lbs/day
ROC	10,950 lbs/yr or 30 lbs/day
PM ₁₀	10,950 lbs/yr or 30 lbs/day
CO	80,300 lbs/yr or 220 lbs/day
H ₂ S	20,000 lbs/yr or 54 lbs/day
Pb	1,200 lbs/yr or 3 lbs/day

- (5) Public Notice and Comment:
- (a) After the APCO has determined to issue ERCs, the APCO shall publish a notice in at least one daily newspaper of general circulation within the District and shall send a copy of the notice to all persons who are included on a list of persons requesting notice, on file with the Clerk of the Board for the District.
 - (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 and type of ERCs proposed to be issued;
 - (iii) The name, address and telephone number of a person from whom additional information may be obtained; and
 - (iv) At least a thirty (30) day period in which interested persons may submit written comments to the District regarding the proposed issuance of the ERCs.
 - (c) The APCO shall accept all germane and nonfrivolous comments which are received during the comment period. The APCO shall consider such comments prior to issuance of the ERCs.
 - (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 five (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 USEPA and CARB, if the preliminary determination was sent to such agencies pursuant to subsection (C)(4)(a)(ii) above).

(D) Standards for Granting Emission Reduction Credits

- (1) ERCs shall be real, enforceable, permanent, quantifiable and surplus.

- (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 permits have occurred or other enforceable documents have been submitted as indicated below:
 - (a) If the emission reduction is the result of a Modification or limitation of use of existing equipment:
 - (i) A revised permit to operate containing federally enforceable conditions reflecting the Modification and/or limitations has been issued.
 - (b) If the emission reduction is the result of a shutdown of permit unit(s):
 - (i) The relevant permits have been surrendered and voided.
 - (ii) The emissions unit(s) for which the permits were surrendered will not be re-permitted within the District, unless their emissions are completely offset pursuant to Regulation XIII - New Source Review.
 - (c) If the emission reduction is the result of a shutdown of a emission unit(s) which did not have a District permit:
 - (i) A valid District permit has been obtained or a contract enforceable by the District has been executed by the applicant which contains enforceable limitations reflecting the reduced emissions.
 - (d) If the emission reduction is the result of the application of a more efficient control technology to a previously unpermitted emission unit(s):
 - (i) A valid District permit has been obtained which contains enforceable limitations reflecting the reduced emissions.
- (4) If the emission reduction originates from a previously unpermitted emission unit, 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 Emission Reduction Credits

- (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 by pollutant purchased.
 - 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 South Coast Air Quality Management District may be transferred to the AVAPCD ERC Registry according to the following procedure:
 - (i) The owner of the ERCs shall submit a request to include the ERCs in the AVAPCD ERC Registry by:
 - a. Requesting such inclusion in writing; and
 - b. Surrendering the ERC certificate or other evidence of the ERCs obtained from the South Coast Air Quality Management District.
 - (ii) Upon receipt of the request and documentation the APCO shall:
 - a. Notify the South Coast Air Quality Management District in writing of the request, the intent to include such ERCs in the AVAPCD ERC Registry, and request that the South Coast Air Quality Management District remove such ERCs from its bank.
 - b. The APCO shall, at the request of the South Coast Air Quality Management District, submit the original certificate and/or documentation which was surrendered to effectuate such removal.
 - c. Within ninety (90) days of such notification, upon the submission of the original certificate and/or documentation or upon receipt of notification from the South Coast Air Quality Management District 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 South Coast Air Quality Management District and which are owned by an owner/operator located within the jurisdiction of the District may be transferred to the AVAPCD ERC Registry according to the following procedure:
 - (i) The owner of the ERCs shall submit a request to include the ERCs in the AVAPCD ERC Registry by:
 - a. Requesting such inclusion in writing; and
 - b. Surrendering the ERC certificate or other evidence of the ERCs obtained from the South Coast Air Quality Management District.
 - c. Paying the applicable fee contained in District Rule 301
 - (ii) Upon receipt of the request and documentation the APCO shall:
 - a. Notify the South Coast Air Quality Management District in writing of the request, the intent to include such ERCs in the AVAPCD ERC Registry, and request that the South Coast Air Quality Management District remove such ERCs from its bank.
 - b. The APCO shall, at the request of the South Coast Air Quality Management District, submit the original certificate and/or documentation which was surrendered to effectuate such removal.
 - c. Within ninety (90) days of such notification, upon the submission of the original certificate and/or documentation or upon receipt of notification from the South Coast Air Quality Management District 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 Health and Safety Code 40709.6 either at the time of the transfer or upon use.
 - (c) ERCs once transferred to the AVAPCD ERC Registry may not thereafter be utilized within the South Coast Air Quality Management District
- (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 due to the readjustment of AERs due to changes in the District's AQAP or SIP shall be processed as follows:
 - (i) The owner of the ERC shall file an application to adjust the AER.
 - (ii) The APCO shall determine if the adjustment of the AER 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, enforceable, permanent and quantifiable.
- (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 Emission Reduction Credits

- (1) If an application for ERCs is deemed withdrawn pursuant to subsection (C)(2)(b)(i)d. the applicant may, within thirty (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 thirty (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) 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 Health & Safety Code §42302.

[SIP: Submitted as amended 03/20/01 on _____; Approved 2/4/96, 61 FR 64291, 40 CFR 52.220(c)(240)(i)(A)(1)]