

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

RULE 2-4 – PERMITS - EMISSIONS BANKING

(Adopted March 7, 1984; Amended July 17, 1991; June 15, 1994; October 7, 1998; May 17, 2000; December 21, 2004).

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PERMITS
RULE 4
EMISSIONS BANKING**

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**REGULATION 2
PERMITS
RULE 4
EMISSIONS BANKING**

(Adopted March 7, 1984)

2-4-100 GENERAL

2-4-101 Banking: The banking of emission reduction credits is intended to provide a mechanism for sources to obtain offsets under the New Source Review regulations contained in Regulation 2, Rule 2 of the District and is not intended to recognize any pre-existing vested right to emit air pollutants.

(Amended June 15, 1994)

2-4-200 DEFINITIONS

2-4-201 Emission Reduction Credit: As defined in Section 2-2-201.

(Amended 7/17/91; 6/15/94; 10/7/98)

2-4-202 Deleted May 17, 2000

2-4-203 Bankable Pollutants: Emission reduction credits of the following pollutants may be deposited in the emissions bank: precursor organic compounds, non-precursor organic compounds, particulate matter, PM₁₀, sulfur dioxide, nitrogen oxides, and carbon monoxide.

(Amended 7/17/91; 6/15/94)

2-4-204 Reasonably Available Control Technology: As defined in Regulation 2-1-209.

(Amended July 17, 1991)

2-4-300 STANDARDS

2-4-301 Bankable Reductions: All emission reduction credits as defined in Section 2-4-201 not prohibited by Section 2-4-303 are bankable. The APCO may include a condition in an authority to construct involving reductions pursuant to subsections 2-4-301.1, 301.2, or 301.5, stating that the emission reduction shall be eligible for banking after being demonstrated by source test or other means acceptable to the APCO, including emission factors. Any regulatory change adopted 90 or more days after a complete application for an authority to construct shall not affect the potential for bank deposits resulting from reductions at sources covered by that authority to construct. The following are examples of bankable reductions:

301.1 Emission reduction credits resulting from the installation of a level of control greater than required by regulation are bankable, including installation of BACT where BACT is not required.

301.2 Emission reduction credits due to the installation of different processes or equipment which emit less than the previous process or equipment that performed the same function.

301.3 Emission reduction credits due to the effective operation and maintenance of abatement equipment if the applicant accepts a condition on the permit specifying a lower level of emissions than otherwise required by District regulations.

301.4 Emission reduction credits resulting from switching to a fuel which results in less emissions, provided the applicant agrees to a condition on the appropriate permit specifying the fuel to be used in the future.

301.5 Emission reduction credits of fugitive emissions if the reductions are quantified by source tests or other methods approved by the APCO.

301.6 Other emission reduction credits, such as 1) limitations on the type or quantity of fuel burned, 2) solvent recovery projects, and 3) limitations on throughput.

301.7 Emission reduction credits which would result from changes to specific limiting conditions in an authority to construct or permit to operate issued

since March 7, 1979, provided that the emissions associated with those limiting conditions have been offset pursuant to the requirements of Regulations 2-2-302 or 303.

- 301.8 Emission reduction credits resulting from mobile source reductions calculated in accordance with the procedures of Regulation 2-2-607.

(Amended 7/17/91; 6/15/94)

2-4-302 Bankable Reductions for Closures: Emission reduction credits not prohibited by Section 2-4-303 are bankable. The following restrictions apply:

- 302.1 Closure of sources, where the reduction is permanent at the source, but it is unclear whether the reduction will be replaced by an emissions increase elsewhere within the District, are bankable only if the applicant accepts a condition restricting use of the deposits to offsetting emission increases in the same or closely related industries. For example, the closure of public utility power generation facilities could be bankable if use is restricted to offsetting emission increases from other power generation facilities (including resource recovery and cogeneration facilities). Closure of petroleum or petroleum product storage tanks at refineries could be bankable if use is restricted to offsetting emission increases at other petroleum or petroleum products storage tanks, or to offset emission increases at the associated refinery.
- 302.2 Issuance of a Banking Certificate for emission reductions resulting from a closure cancels the permit to operate. The reduction shall be enforceable through a condition in the Banking Certificate and through enforcement of Regulation 2-1-302 pertaining to operating without a permit.
- 302.3 The permanency of closures shall be demonstrated through removal of the source from the District, rendering it inoperative, destruction of the source, or by inclusion of appropriate conditions in the Banking Certificate providing for automatic cancellation of the Banking Certificate if emissions resume and replacement by the applicant of the emission reduction credit if the deposit has been transferred or withdrawn.

(Amended 7/17/91; 6/15/94; 5/17/00)

2-4-303 Limitations on Deposits: The following cannot be banked:

- 303.1 Emission reduction credits achieved during periods in which a moratorium on banking deposits is in effect pursuant to Section 2-4-410. After removal of the moratorium, they may subsequently be banked. The period of the moratorium shall not be considered "normal operation" for the purpose of determining the bankable emissions.
- 303.2 Emission reductions from closure of sources where the demand for the services or product would merely shift to other sources in the District, with little or no decrease in emissions basin-wide.
- 2.1 The APCO may, at his or her discretion, require submittal of data to document that reductions from the closure of such types of operations will not result in such a shift, and could therefore be banked.
- 2.2 Only the net reduction (if any) shall be banked for shutdowns of manufacturing operations where the operation is being transferred elsewhere within the same stationary source or to a different stationary source owned by the applicant within the District.
- 303.3 Emission reductions due to the shutdown or closure of sources or the installation of controls on sources excluded from District regulations pursuant to Regulation 1-110 or exempt from permit requirements pursuant to Regulation 2-1.
- 303.4 Transfer of ownership of an emission source if the source remains operable and within the District.
- 303.5 Emission reductions at facilities belonging to companies which have received unreimbursed offsets from the Small Facility Emissions Bank. Once these offsets have been reimbursed, the remaining emission reductions may be banked.

(Amended 7/17/91; 6/15/94; 10/7/98; 5/17/00)

2-4-304 Limitations on Use of Deposits: Emission reduction credits may not be used to:

- 304.1 Exempt a source from Best Available Control Technology (BACT) requirements contained in subsections 2-2-301.1 and 301.2 of Regulation 2.

304.2 Exempt a source from emission limitations established in Regulation 10 (New Source Performance Standards).

304.3 Exempt a source from any other air pollution control requirements whatsoever of Federal, State, or District laws, rules and regulations.

(Amended 7/17/91; 6/15/94)

2-4-305 Use of Withdrawals: Bank deposits may be withdrawn by the depositor or by any other person to whom they have been transferred by the depositor for use in meeting the requirements to obtain offsets specified in Rule 2 of this Regulation.

(Amended July 17, 1991)

2-4-400 ADMINISTRATIVE REQUIREMENTS

2-4-401 Banking Application: An application to deposit an emission reduction in the emissions bank shall be submitted on forms specified by the APCO. No banking application shall be accepted from a stationary source for pollutants which are the subject of a variance, abatement order or other similar formal order, until compliance with the emission limitations which are the subject of the variance or order is achieved.

2-4-402 Complete Banking Application: The APCO shall determine whether a banking application is complete not later than 30 calendar days following receipt of the application, or after a longer time period agreed upon in writing by both the applicant and the APCO. If the APCO determines that the application is not complete, the applicant shall be notified in writing of the decision, specifying the information that is required. The applicant shall have 90 days to submit the requested information. Upon receipt of all requested information, a new 30 day period to determine completeness shall be initiated. If, at the end of 90 days, no data is submitted or the application is still incomplete, the APCO may cancel the banking application with written notification to the applicant. Upon a determination that the application is complete, the APCO shall notify the applicant in writing. Thereafter, only information to clarify, correct, or otherwise supplement the information submitted in the application, may be requested. Withdrawal of a banking application by an applicant shall result in cancellation of the application; any re-submittal may be evaluated using a new application completion date.

(Amended 7/17/91; 6/15/94; 5/17/00)

2-4-403 Preliminary Decision: Within 60 days following the acceptance of a banking application as complete, which is not subject to the publication, public comment and inspection requirements of Section 2-4-405, or, with the consent of the applicant, such longer period as may be agreed upon, the APCO shall make a preliminary decision and notify the applicant in writing as to whether the APCO intends to approve, conditionally approve, or deny the application.

(Amended July 17, 1991)

2-4-404 Preliminary Decision, Major Deposits: Within 90 days following the acceptance of a banking application as complete, which is subject to the publication, public comment and inspection requirements of Section 2-4-405, or, with the consent of the applicant, such longer period as may be agreed upon, the APCO shall make a preliminary decision and notify the applicant in writing as to whether the APCO intends to approve, conditionally approve, or deny the application.

(Adopted July 17, 1991)

2-4-405 Publication, Public Comment and Inspection: Before approving the banking of any emission reduction in excess of 40 tons per year of any pollutant or before declaring a moratorium on further banking of emission reductions, the APCO shall cause to be published in at least one newspaper of general circulation within the District, and be sent to any individual submitting a written request to the APCO for notification, a notice stating the preliminary decision of the APCO to approve the banking of emission reductions or to declare a moratorium on further banking of emission reductions and inviting written public comment. The APCO shall make available for public inspection at District headquarters the information submitted by the applicant, the APCO's analysis, and the preliminary decision to grant or deny the banking application, including the reason therefore and any proposed conditions. The confidentiality of trade secrets shall be considered in accordance with Section 6254.7

of the Government Code. Such information shall also be transmitted to adjacent air pollution control districts, the California Air Resources Board, and the U.S. EPA.

(Renumbered, Amended July 17, 1991)

2-4-406 Public Meeting: During the 30-day period following the date of publication, which may be extended by the APCO, the APCO may, based on the receipt of written comments, elect to hold a public meeting to receive oral and written comments from the public. After considering all such comments, the APCO shall, within 30 days of the close of the comment period, make a final decision concerning such banking.

(Renumbered July 17, 1991)

2-4-407 Banking Certificate: The APCO shall issue a banking certificate within 30 days of the issuance of the preliminary decision for an approved deposit not subject to Section 2-4-405, or within 30 days of the close of the public comment period if the banking application is approved. The certificate shall identify the owner of the certificate, the quantity of the emission reduction credits of each pollutant for deposit in the emissions bank in tons per year, the location of the facility at which the reduction was created, any conditions on use of the emission reduction credits, and any other data deemed appropriate by the APCO.

(Renumbered, Amended 7/17/91; Amended 6/15/94)

2-4-408 Appeal to the Hearing Board, Banking: Any person dissatisfied with the decision of the APCO regarding the approval or disapproval of an application for banking air contaminants may appeal that decision within 30 calendar days in accordance with the provisions of Regulation 2-1-410.

(Renumbered, Amended 7/17/91; Amended 5/17/00)

2-4-409 Protection and Duration of Deposits: Deposits are permanent until used by the depositor or any party to whom the depositor has transferred the deposit. Changes in offset ratios shall not apply to emission reduction credits already used. After issuance of the Banking Certificate confirming the deposit, subsequent changes in regulations to require the type of reduction banked shall not reduce or eliminate the deposit.

(Renumbered 7/17/91; Amended 6/15/94)

2-4-410 Moratorium on Banked Emissions: If the APCO determines that additional mandatory emission reductions will be necessary to attain an ambient air quality standard, the APCO may declare a full or partial moratorium on banking deposits of the applicable air contaminant, after opportunity for public comment as provided in Sections 2-4-405 and 406. Such a moratorium shall be lifted after the APCO determines that the Bay Area Air Quality Plan demonstrates attainment of such standards.

(Renumbered, Amended July 17, 1991)

2-4-411 Banking Register: The District shall maintain a "banking register", which shall consist of a record of all deposits, deposit applications, withdrawals, and transactions. A summary of the data in the banking register shall be available to the public upon request and the District emission inventory shall explicitly include all outstanding deposits appearing in the summary as current existing emissions.

(Renumbered, Amended July 17, 1991)

2-4-412 Withdrawal Procedures for Deposits: The following are procedures to be used for the withdrawal of banked emission reduction credits:

412.1 Deposits shall be withdrawn in accordance with the offset ratios in effect at the time of withdrawal as specified in Regulations 2-2-302 and 303.

412.2 The owner of record shown in the District's banking register shall surrender the Banking Certificate in order to withdraw the banked emission reduction credit. If the entire deposit is used, the District shall retain the Certificate; if the deposit is partially used, the District shall retain the old Certificate and issue a new Certificate identifying the remaining portion of the deposit.

412.3 If the deposit is transferred for later use, the owner of record shall submit the old Certificate signed by the owner of record and by the new owner; the District shall retain the old Certificate, issue a new Certificate in the name of the new owner for the amount transferred, and issue a new Certificate to the existing owner for any portion not transferred.

412.4 If the deposit is transferred for use in an application for an authority to construct which requires offsets, the owner of record shall submit the old Certificate signed by the owner of record and by the new owner; the District

shall retain the old Certificate, issue a new Certificate to the owner of record for any portion of the deposit not transferred, and identify use of the deposit in the authority to construct issued to the user of the deposit. No Certificate shall be issued to the user.

- 412.5 For any transferred deposit, the creator of the deposit shall continue to have enforceable conditions in the appropriate permits to operate to assure permanency of the emission reduction and shall be held liable for compliance with those conditions; the user of any transferred bank deposit shall not be held liable for any failure of the creator to comply with District requirements.

(Renumbered, Amended 7/17/91; Amended 6/15/94)

- 2-4-413 Annual Report, Banking:** The APCO shall provide an annual report to the Board of Directors on all banking transactions which have occurred during the preceding year.

(Renumbered July 17, 1991)

- 2-4-414 Small Facility Banking Account:** The APCO may establish a small facility banking account and grant offsets. The APCO may fund the Small Facility Banking Account by deposit of unclaimed emission reductions resulting from source or facility closures, and by a small facility growth allowance established in the Clean Air Plan adopted by the District. In no event, may the APCO grant offsets in an amount that exceeds the amount contained in the Small Facility Banking Account. Allocation of credits shall conform to the requirements of Section 40919(a)(2) of the Health and Safety Code. If an applicant holds banked emission reduction credits, those credits must be used as a source of offsets prior to the APCO approving offsets from the small facility banking account (this includes bankable emission reduction credits held by other District facilities owned by the applicant). For the purposes of determining the amount of offsets granted by the APCO, any banked emission reduction credits that have been sold during the three years preceding a complete permit application shall be considered to be held by the applicant. Allocations from the small facility banking account cannot be transferred or banked by the recipient.

(Adopted 7/17/91; Amended 6/15/94; 10/7/98; 5/17/00; 12/21/04)

- 2-4-415 Military Base Closure Banking Account:** The APCO shall establish a banking account for each military facility or base subject to termination of military operations. The APCO shall, in accordance with the provisions of this rule, bank the emission reduction credits for each military facility or base. The designated base reuse commission shall be entitled to the use of the banked emission reduction credits for projects within the jurisdiction of the base reuse commission, provided that the emission reduction credits have not been banked by the military facility or base.

(Adopted June 15, 1994)

2-4-600 MANUAL OF PROCEDURES

- 2-4-601 Emission Calculation Procedures:** The emission calculation procedures contained in Regulation 2-2-600 shall be applicable to this Rule.

(Amended July 17, 1991)