

IMPERIAL COUNTY AIR POLLUTION CONTROL DISTRICT

**RULE 214 - EMISSION REDUCTION CREDIT BANKING**

*(Adopted 9/7/93; revised 5/21/96; revised 9/14/99; 10/10/2006)*

A. Rule Purpose and Applicability

A.1 Purpose

A.1.a To ensure that all emission reductions are Transferred through the Air Pollution Control District's Emission Reduction Credit Bank. All Transfers of actual emission reductions that meet the requirements of the District's New Source Review (NSR) Rule shall be processed in accordance with this Rule.

A.1.b To provide an administrative mechanism for the Air Pollution Control Officer (APCO) to store Surplus emission reductions:

A.1.b.1 For later use as Offsets where allowed by District, state and federal rules and regulations.

A.1.b.2 For Transfer to other Sources as Offsets where allowed by District, state and federal rules and regulations; and

A.1.c To define eligibility standards, quantitative procedures, and administrative practices to ensure that Emission Reduction Credits (ERCs) are Real, Permanent, Quantifiable, Enforceable, and Surplus.

A.2 Applicability

A.2.a This regulation shall apply to all applications for Emission Reduction Credits for Transfer or use within the District.

A.2.b For the purpose of this Rule, Agricultural Burning may be considered as a source of ERCs. Only Agricultural Burning permitted under Rule 701 will be eligible for consideration as ERCs pursuant to this Rule.

A.2.c Emission Reductions as a result of Mobile Sources may be considered as a source of ERC's. All applications for ERC's from Mobile Sources must comply with the stipulations and conditions as set forth in Rule 214.1 Mobile Source Emission Reduction Credit Banking

B. (Reserved)

C. Eligibility of Emission Reductions

C.1 Emission reductions shall be recognized as ERCs only after an ERC Certificate has

been issued.

- C.2 The emission reduction may be recognized as an ERC if:
  - C.2.a Reductions are Real, Surplus, Permanent, Quantifiable, and Enforceable;
  - C.2.b The quantity of emission reductions is determined in accordance with the District's New Source Review rule. The quantity of emission reductions for Agricultural Burning is determined in accordance with AP-42 calculations.
  - C.2.c ERCs issued on or after January 1, 1988, and prior to September 7, 1993 have been reevaluated in accordance with this Rule prior to their use.
  - C.2.d ERCs issued prior to January 1, 1988, providing the resultant emission increases are accounted for in the California Clean Air Act attainment plan.
  - C.2.e Actual emission reductions which occurred on or after January 1, 1988, and prior to September 7, 1993, that were recognized by the District pursuant to a formal internal tracking system, providing the cumulative net emissions increase for the Stationary Source is negative and the Banking application is filed within 180 days of September 7, 1993.
  - C.2.f Emission reductions occurring after September 7, 1993, shall be eligible to apply for ERCs in accordance with this Rule.
  - C.2.g The emission reduction Source shall be subject to Enforceable permit conditions containing specific operational and emission limitations, which ensure that the emission reductions will be provided in accordance with the provisions of this Rule and shall continue for the reasonably expected life of the proposed Source. A violation of the emission limitation provisions of any permit created or modified to reflect the creation of the emission reductions shall be chargeable to the ERC creator.
  - C.2.h If the emission reduction is created from an Emissions Unit where the demand for the services or product could merely shift to other similar Sources in the District with no decrease in emissions District-wide, the Air Pollution Control Officer may, at his/her discretion require submittal of data to document that such reductions will not result in such a shift, and could therefore be banked.
  - C.2.i If the emission reduction is created from a non-permitted Source the Air Pollution Control Officer shall require the non-permitted Source to give up its non-permitted status and obtain an Enforceable permit complete with all operational and emission limitations.
  - C.2.j Emission reductions of Toxic Air Contaminants which qualify as criteria

pollutant emission reductions shall be eligible for deposit into the Bank. The use of these ERCs, or any other credits ERCs shall be allowed to Offset only increases in like emissions, and not the increases in Toxic Air Contaminants.

### C.3 Agricultural Burns:

- C.3.a An application for ERCs based on reductions of Agricultural Burning must be submitted 30 days before the reduction will occur.
- C.3.b For Agricultural Burning the emission reduction will be deemed to have occurred when the Air Pollution Control District has been presented with proof of final disposition of the Biomass material.
- C.3.c An ERC for reduction of Agricultural Burning may be utilized to full extent of the banked amount for a two year period commencing on the date the ERC Certificate is issued. Commencing on the second anniversary of the ERC Certificate date, the banked amount available for use shall be reduced by 1/4 of the banked amount so that by the end of the fifth year the banked amount available for use will be zero.
- C.3.d Applicants for emission reduction credits from agricultural burns must demonstrate to the satisfaction of the Air Pollution Control Officer that the credits will meet all the requirements of this Rule, including sections C.1 and C.2.

### C.4 Shutdowns

- C.4.a Emission reductions resulting from Shutdowns or permanent curtailment of Sources shall not be more than a) the quantity of emissions that would have been emitted had the Source operated with Reasonably Available Control Technology (RACT) and in compliance with existing rules and regulations, or b) Actual Emissions, whichever less.
- C.4.b If the emission reduction is due to the Shutdown of a permitted unit, the ERC Certificate applicant must demonstrate to the satisfaction of the Air Pollution Control Officer that emissions from such unit or units meet all applicable requirements of this Rule. Such unit or units will no longer be operated within the District unless and until a new Permit to Operate is obtained after undergoing the permit process as required by the District's New Source Review Rule, the District's standard for Permit to Operate, and other applicable District, state, and federal rules and regulations.
- C.4.c Emission reductions resulting from Shutdowns or permanent curtailment of Sources permitted to emit greater than 5 tons or more per day or greater than 250 tons per year of any Nonattainment Pollutant or its Precursor shall not be more than the quantity of emissions that would have been emitted had the

Source operated with Best Available Retrofit Control Technology (BARCT) and in compliance with existing rules and regulations.

C.5 Mobile Source Emission Reduction Credits (MSERC)

C.5.a Applicants must demonstrate to the satisfaction of the Air Pollution Control Officer that emission reduction credits resulting from mobile sources meet all the requirements of Rule 214.1

D. ERC Certificate Application Procedures

D.1 Any entity which owns or operates an Emissions Unit at which an eligible emission reduction is proposed to be banked, shall apply for an ERC Certificate in accordance with the requirements of this Rule.

D.1.a For purposes of this Rule, an ERC Certificate is a document identifying the quantity and type of ERCs issued by the District to the individual(s) or Sources identified on the Certificate.

D.2 ERC Certificate applications shall be submitted on forms supplied by the District. No emission reduction shall be recognized as an ERC unless the application for an ERC Certificate is received not more than ninety or less than thirty days prior to the date the emission reduction is to occur, unless otherwise provided in this Rule.

D.3 An application must be made for each Emissions Unit applying for an emission reduction credit. The application shall contain sufficient information to allow for adequate evaluation of each emission decrease, and contain information necessary for the Banking Register specified in Section E.11 of this Rule.

D.4 In accordance with the provisions of District Rule 102, Section 6254.7 of the California Public Records Act, applicants may claim confidentiality of information contained in the application.

D.5 The Air Pollution Control Officer may only grant an ERC Certificate after the emission reductions have actually occurred pursuant to the conditions specified in this Rule, and upon satisfaction of the following applicable provisions(s):

D.5.a If the emission reductions were created as a result of greater operating efficiencies or from the application of more efficient control technology, a revised operation permit has been obtained. This revised permit must include specific Quantifiable emission limits reflecting the reduced emissions.

D.5.b If the emission reductions were created as a result of the Shutdown of a permitted Source, the relevant operating permit(s) has been surrendered and voided; or

D.5.c If the emission reductions from a permitted Source were created by means of

reducing production or production rates, the relevant operating permits have been modified to reflect the emission reductions; or

- D.5.d If the emission reductions were created as a result of the application of greater operating efficiencies or from the application of a more efficient control technology to a then non-permitted Emissions Unit an operating permit has been obtained. The referenced permit shall include specific Quantifiable emission limits reflecting reduced emissions.
- D.6 Where appropriate, to confirm emission reductions claimed in conjunction with an application for an ERC Certificate, the District may require source tests, continuous monitoring, production records, fuel use records, or any other appropriate means of measurement.
- D.7 ERC applicants consisting of two or more owners applying for emission reduction credits derived from a single reduction at a single emitting unit may apply for and receive single or multiple ERC Certificates. Multiple ERC Certificates shall be issued for each owner's proportional scale.
- D.8 ERCs from military base closures shall also be regulated by Health and Safety Code Section 40709.7, which is incorporated by reference.
- D.9 The Air Pollution Control Officer shall determine whether an ERC Banking Certificate 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 Air Pollution Control Officer.
- D.10 If the Air Pollution Control Officer determines that the application is not complete, the applicant shall be notified in writing of the decision, specifying the additional information that is required. The applicant shall have 90 days to submit the requested information. Upon receipt of all requested information, the District shall have 30 days to determine completeness. If no data is submitted or the application is still incomplete, the Air Pollution Control Officer may cancel the ERC Banking Certificate application with written notification to the applicant. Upon determination that the application is complete, the Air Pollution Control Officer shall notify the applicant in writing. There after, only supplemental information submitted in the application may be requested.
- D.11 Withdrawal of a Banking application by an applicant shall result in cancellation of the application; any re-submittal shall be evaluated using a new emission calculation as on the date of re-submittal.
- D.12 Upon acceptance of a Complete Application, the Air Pollution Control Officer shall have 60 days to perform an initial assessment of the application. Upon completion of this initial assessment, the District shall provide notice of acceptance to the U.S. Environmental Protection Agency, to any relevant Federal Land Manager if an

emissions trade occurs within 100 km of, or might otherwise reasonably have any impact on, a PSD Class I area, and in a newspaper of local circulation for applications to bank 100 lbs/day or more of NO<sub>x</sub>, SO<sub>x</sub>, and HC, 80 lbs/day or more of PM<sub>10</sub>, and 550 lbs/day or more of CO. The notice shall specify the applicant and the quantity of emission reductions requested and a statement of the initial assessment. Publication of the notice shall commence a 30 day public comment period during which the Air Pollution Control Officer shall accept written comments on the merits of the ERC Certificate application. Upon conclusion of this 30 day period, the Air Pollution Control Officer shall have 30 days to render a decision as to whether the Air Pollution Control Officer approves, conditionally approves, or denies the application. This decision shall be promptly supplied in writing to the applicant and published in a newspaper of local circulation

D.13 The applicant or any other party may appeal the Air Pollution Control Officer's decision following provisions specified in the District's appeals rule.

#### E. Registration of ERC Certificates

E.1 When all the requirements of this Rule have been satisfied and the emission reduction has actually occurred, the District shall issue the ERC Certificate. Upon the Air Pollution Control Officer's determination to grant an ERC Certificate, title to such ERC shall be registered in the Banking Register and made available for public inspection.

E.2 All information concerning titles, interest, and other matters such as liens, encumbrances, and changes of record shall be identified in the ERC Banking Register, as well as pertinent date(s) concerning such information, until such time as the ERC Certificate is used, canceled, or nullified by operation of law.

E.3 Each ERC Certificate shall be numbered consecutively, bear the date of issuance, be signed by the District official charged with the responsibility of keeping the ERC Bank, and bear the seal of the District. One copy of the ERC Certificate shall be retained by the District and the original shall be delivered to the owner or party acting for the owner. The record of issued ERC Certificates shall be retained by the District. Delivery by the District of an ERC Certificate to an owner shall be accomplished in Person or by registered mail. The Person accepting the ERC Certificate must sign a receipt therefore and provide such proof of identity as the Air Pollution Control Officer shall require.

E.4 At the option of joint owners of ERCs, such Persons may receive one ERC Certificate for the entirety or separate ERC Certificates reflecting each proportional share, provided that such ERCs are derived from a single reduction at a single emitting unit. The Air Pollution Control District ERC Bank shall reflect the consolidation or separation of the ERCs and the previous Certificate(s) shall be canceled upon the issuance of the new Certificate(s).

- E.5 After receiving written notice from a Source that it has released its right of control of valid existing unbanked emission reductions created by that Source or after the 90 day application period has elapsed, the District may establish ERC Certificates representing such unbanked emission reductions in the District's Community Bank. These ERCs may be designated as unallocated ERCs for the purposes of accounting and designation in Banking and related reports. Distribution and use of the ERCs represented by the unallocated ERC Certificate(s) shall be consistent with this Rule.
  - E.6 Except as set forth in this Rule, an ERC shall not be limited as to minimum quantity or maximum lifetime. However, its use shall be consistent with all applicable District, State, and Federal rules.
  - E.7 Title to an ERC shall be deemed registered at the time the particulars concerning the ERC are entered into the Register. All other interest in an ERC shall be deemed registered when the particulars concerning such interest are entered into the Register concerning the Certificate.
  - E.8 The registered owner of any interest in an ERC shall hold the same subject only to such liens, charges, and interests as may be noted in the Register, and free from all other interests except liens, claims, or rights arising under the laws of the United States, which the statutes of California cannot require to appear of record upon the Register.
  - E.9 All dealings with ERCs or any interest therein on all liens, encumbrances, and charges upon the same subsequent to the first registration thereof, shall be deemed to be subject to the terms of this regulation, and to such amendments and alterations as may hereafter be made.
  - E.10 The Air Pollution Control Officer may reissue lost or destroyed ERC Certificates after the owner vouches that the original has been lost or destroyed.
  - E.11 The District shall maintain a Banking Register, which shall consist of a record of all deposit applications, deposits, withdrawal, and transactions with regard to the ERC Bank. Subject to Subsection D.4. of this Rule, all data in the Banking Register shall be available to the public upon request. The Register shall also contain information specified in Health and Safety Code Section 40709.5, which is incorporated by reference.
- F. Withdrawal, Transfer, and Use of ERCs
- F.1 Subject to Section E, ERCs may be used at the time of, or anytime after, deposit into the Air Pollution Control District ERC Bank by the owner of the ERC Certificate to compensate for emission increases due to operation of new or modified Sources of air pollution, their ultimate value will be determined based on the program under which they will be used and the attainment/nonattainment status of to area at the time of their use.

- F.2 An ERC may be used as Offsets in accordance with applicable District, state, and federal rules and regulations.
- F.3 An ERC Certificate may be Transferred or used in whole or in part. The role of the District in trading of an ERC Certificate shall be limited to providing information on the documentation and registration of ERC Certificate Transfer in whole or in part of a registered ERC Certificate shall be in writing, signed on behalf of the owner by an authorized signatory, and acknowledged by the District. Upon filing such instrument and with the District's acknowledgment, the Transfer shall be deemed complete and the District's records shall so indicate Transfer to the new owner. A new ERC, shall be issued and the last previous original(s) shall be canceled. Such cancellation shall be recorded in the Banking Register.
- F.4 ERC Certificates shall not be used to Offset increases in Toxic Air Contaminants.
- F.5 The District shall prohibit the Transfer of an ERC Certificate, issued for the Shutdown of a Source which occurred prior to the District receiving an application for that ERC Certificate, to a new or modified Stationary Source which has a Potential to Emit greater than emission thresholds established for the District in the Federal Clean Air Act for major source (as defined in Rule 900) modifications.
- F.6 ERCs will be subject to subsequently adopted control measures required for Reasonable Further Progress.
- F.7 If the Air Pollution Control Officer determines that additional mandatory emission reductions will be necessary to achieve ambient air quality standard(s), the Air Pollution Control Officer may declare a freeze on all transactions occurring with the ERC Bank until a determination is made as to whether a moratorium shall be imposed. Prior to imposing any kind of moratorium, the Air Pollution Control Officer must provide a public notice that the District has determined that sufficient emission reductions cannot be achieved through the imposition of additional controls on existing permitted or non-permitted emitting Sources. During the notice period the ERC bank shall be frozen preventing any deposits or withdrawals of ERCs. Only after a public hearing resulting in the determination that a moratorium is needed and written notice is given to ERC Certificate owners of the applicable contaminant may any moratorium be imposed. Any such moratorium shall be lifted upon the determination by the Air Pollution Control Officer and public notice that "Reasonable Further Progress" can be demonstrated by Air Pollution Control District

G. Fees

- G.1 ERC Certificate Fee: Every applicant, except any State or local governmental agency or public District shall, for the issuance of new or revised ERC Certificate, pay a fee of \$85.00. Failure to pay the fee due within 30 days of Personal receipt or mailing of the statement, shall result in automatic cancellation of the application for an Emission Reduction Credit.



- G.2 Transfer Fee: Every applicant, except any State or local governmental agency or public District, for the Transfer of ownership of an ERC Certificate, shall pay a filing fee of \$85.00.
- G.3 Cancellation or Denial: If an application for a Banking Certificate is canceled by the applicant, or if the Air Pollution Control Officer denies issuance of a certificate and such denial becomes final, the filing fee required herein shall not be refunded nor applied to any subsequent application.
- G.4 Duplicate Certificate: A fee of \$20.00 shall be charged, except to any State or local agency or public District, for the issuance of a duplicate Banking Certificate.

#### H. Recordkeeping

Stationary Sources that claim Agricultural Burning emission reduction credits pursuant to Health and Safety Code Sections 41605.5 and 42314.5 shall keep a daily log of Biomass received by type, origin, quantity, and date. Such sources shall also be required to prepare and submit to the District a biweekly report on their emissions and corresponding Biomass Offsets. An annual status report on contracts for the procurement of such Offsets shall be submitted to the District no later than one month prior to the anniversary date of the applicable Permit(s) to Operate.