

**RULE 26.0. BANKING OF EMISSION REDUCTION CREDITS (ERCs) –
GENERAL REQUIREMENTS** (Adopted & Effective 10/22/97;
Rev. Adopted & Effective 06/26/19)

(a) **APPLICABILITY**

Rules 26.0 through 26.10 apply to any person creating, applying for, owning, transferring, or using stationary source emission reduction credits (ERCs).

(b) **ADMINISTRATIVE REQUIREMENTS**

(1) Any person wanting to bank emission reductions shall submit an application to the Air Pollution Control Officer. A separate application shall be required for each emission unit that produces a product or performs a service independently of other emission units and may include a request for banking multiple pollutants. The Air Pollution Control Officer may allow more than one emission unit to be included in a ERC banking application. Upon approval of the application by the Air Pollution Control Officer, the District shall record such reductions in an ERC register and shall issue a certificate evidencing ownership of such banked reductions to the owner(s) of the ERC.

(2) Fees for an initial ERC banking application, a banked ERC transfer application, an ERC reclassification application and an advisory opinion shall be paid in accordance with the labor rates specified in Rule 40.

(3) An ERC certificate may include a condition requiring the payment of a fee, annual or otherwise, if the Air Pollution Control Officer determines such fee necessary to recover District costs for monitoring, enforcing or otherwise ensuring the continued validity of the ERC. The fee shall be determined using the labor rates specified in Rule 40 of these rules and regulations. Failure to pay any such fee shall be grounds for ERC invalidation.

(4) Notwithstanding the exemptions from permit requirements specified in Rule 11, the Air Pollution Control Officer may require a permit to operate for an emission unit if the Air Pollution Control Officer determines such a permit to operate and associated permit conditions are necessary to ensure the enforceability of an ERC. The fee for such permit to operate shall be determined using the labor rates specified in Rule 40.

(5) The Air Pollution Control Officer shall maintain an ERC Register which shall consist of a record of all information specified in Rule 26.9(c) and (d) concerning an approved ERC. All data in the ERC Register shall be available to the public upon request.

(6) The Air Pollution Control Officer shall maintain a list of State Implementation Plan (SIP) and Regional Air Quality Strategy (RAQS) control measures for which ERCs may not be issued (limited ERCs are allowable under Rule 26.8).

(7) The Air Pollution Control Officer shall be responsible for including banked ERCs in the emissions inventory so that the credits are considered for air quality planning purposes, if necessary. Any failure by the Air Pollution Control Officer to fulfill this responsibility shall not affect the validity of the ERCs in any manner.

(8) ERCs that were banked before October 22, 1997, whether Class A or Class B, shall not be invalidated and shall remain in the bank until withdrawn or used.

(c) **DEFINITIONS**

For the purposes of Rules 26.0 et seq., the following definitions shall apply:

(1) "**Actual Emissions**" means the emissions from an emission unit calculated pursuant to Section (d) of this rule.

(2) "**Actual Emission Reductions**" means emission reductions which are real, surplus, enforceable, federally enforceable, and quantifiable and may be permanent or temporary in duration. Actual emission reductions shall be calculated pursuant to Section (d) of this rule. All actual emission reductions must be federally enforceable by conditions in the permit or ERC.

(3) "**Banking**" means a regulatory system that recognizes and reserves actual emission reductions achieved by any person for later use.

(4) "**Base Reuse Authority**" means the authority recognized pursuant to Section 65050 of the Government Code.

(5) "**BRAC Military Base**" means a military base that is designated for closure or downward realignment pursuant to the Defense Base Closure and Realignment Act of 1988 (P.L. 100-526) or the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. Sec. 2687 et seq.).

(6) "**Certificate**" means a District-issued document regarding an ERC and containing the information specified in Rule 26.9(a).

(7) "**Class A ERC**" means an ERC that meets all of the criteria for emission reductions identified in Rule 26.1.

(8) "**Class B ERC**" means an ERC that fails to meet one or more of the criteria necessary to qualify as a Class A ERC.

(9) "**Emission Offsets**" means emission reductions used to mitigate emission increases pursuant to these Rules and Regulations.

(10) "**Emission Reduction Credit or ERC**" means an actual emission reduction at a stationary source which is banked pursuant to these rules and regulations, registered with the District, and for which an ERC certificate is issued.

(11) "**ERC Register**" means a tracking system maintained by the District which lists each ERC and related information specified in Rule 26.9(c) and (d).

(12) "**Emission Unit**" means any article, machine, equipment, contrivance, process or process line, which emit(s) or reduce(s) or may emit or reduce the emission of any air contaminant.

(13) "**Enforceable**" means capable of being enforced by the District, including through either the SIP or inclusion of conditions on an Authority to Construct, Permit to Operate, Determination of Compliance or ERC certificate.

(14) "**Federally Enforceable**" means, for purposes of creating, banking and/or using ERCs, capable of being enforced by the federal Environmental Protection Agency (EPA) including through either the SIP or terms and conditions of a Permit to Operate or an ERC certificate that are necessary to ensure compliance with Rules 26.0 et seq., and to ensure the validity of the emission reduction, or through terms and conditions on an Authority to Construct or Permit to Operate or Determination of Compliance as they apply to the creation of emissions reductions eligible for banking under Rules 26.0 et seq. This does not preclude enforcement by the Air Pollution Control Officer.

(15) "**Permanent**" means federally enforceable and which will exist for an unlimited period of time.

(16) "**Quantifiable**" means that a reliable basis to estimate emission reductions in terms of both their amounts and characteristics can be established, as determined by the Air Pollution Control Officer. Quantification may be based upon emission factors, stack tests, monitored values, operating rates and averaging times, process or production inputs, mass balances or other reasonable measurement or estimating practices.

(17) "**Real**" means actually occurring and which will not be replaced, displaced or transferred to another emission unit at the same or other stationary source within San Diego County, as determined by the Air Pollution Control Officer.

(18) "**Reasonably Available Control Technology**" or "**RACT**" means the lowest emission limit that a particular source is capable of meeting by the application of control technology that is reasonably available, as determined by the Air Pollution Control Officer pursuant to the federal Clean Air Act, considering technological and economic feasibility.

(19) "**Regional Air Quality Strategy**" or "**RAQS**" means emission control measures approved by the Air Pollution Control Board to achieve the emission reductions necessary to meet the state ambient air quality standards.

(20) "**Replacement Emission Unit**" means an emission unit which supplants another emission unit where the replacement emission unit serves the same function and purpose as the emission unit being replaced, as determined by the Air Pollution Control Officer.

(21) "**Shutdown**" means the cessation of operations or emissions.

(22) "**State Implementation Plan**" or "**SIP**" means emission control measures approved by the Air Pollution Control Board to achieve the emission reductions necessary to meet the federal ambient air quality standards and all such measures subsequently adopted by the District as rules and approved by the federal EPA.

(23) "**Surplus**" means any emission reduction which, as determined by the Air Pollution Control Officer, is in excess of:

(i) Any standard or other requirement provided for in the SIP, including any revisions approved by the federal EPA through rulemaking under Title I of the federal Clean Air Act;

(ii) Any standard or other requirement under Sections 111 or 112 of the federal Clean Air Act;

(iii) Any standard or other requirement of the Acid Rain Program under Title IV of the federal Clean Air Act or the regulations promulgated thereunder;

(iv) Any stationary source emission reduction measure contained in the SIP or RAQS, federal Clean Air Act or California Clean Air Act requirements, or any District, state or federal law, rule, regulation, order or permit condition. A variance issued by the Air Pollution Control District Hearing Board is not an order within the meaning of this subsection;

(v) Any stationary source emission reduction measure noticed for workshop by the District prior to receipt of the application to bank the emission reductions. Such emission reductions shall be considered surplus until they are required by a District rule or regulation. Any ERCs created from such emission reductions shall expire on the date the reductions are actually required by the District rule or regulation to take place. However, if at the time an application to bank is filed with the District, two years have elapsed beyond the date of the latest workshop notice and no corresponding rule or other measure has been adopted, such emission reductions shall be considered surplus;

(vi) Any stationary source emission reduction measure for which the Air Pollution Control Officer has begun the process to add to the SIP, RAQS or the District's Rules and Regulations prior to receipt of the application to bank the emission reductions and which will be added to the SIP, RAQS or the District's Rules and Regulations within 180 days after receipt of a complete application to bank the emission reductions. Such emission reductions shall be considered surplus until they are required by a District rule or regulation. Any ERCs created from such emission reductions shall expire on the date the reductions are actually required by the District rule or regulation to take place;

(vii) Any term or condition of an Authority to Construct issued pursuant to these rules and regulations which term or condition is imposed pursuant to 40 CFR Parts 60 or 61, 40 CFR Part 52.21 or 40 CFR Part 51, Subpart I; and

(viii) Emission reductions which have been banked or otherwise committed for air quality purposes, including as emission offsets.

(24) "**Temporary**" means federally enforceable, existing and valid for a specified limited period of time.

(d) **EMISSION REDUCTIONS CALCULATIONS**

For the purposes of Rules 26.0 et seq., actual emission and actual emissions reductions shall be calculated as follows:

(1) **ACTUAL EMISSIONS**

Actual emissions shall be calculated based on the actual operating history of the emission unit pursuant to the following.

(i) **Time Periods for Calculation**

(A) Actual emissions of an existing emission unit shall be calculated on an operating hour, day and year basis averaged over the most representative two consecutive years within the five years preceding the receipt date of a banking application, as determined by the Air Pollution Control Officer.

(B) For emission units which have not been operated for a consecutive two-year period which is representative of actual operations within the five years immediately preceding the receipt date of the banking application, the calculation of actual emissions shall be based on any two one-year operating periods determined by the Air Pollution Control Officer to be representative within that five-year period. If a representative two-year operating time period does not exist, the calculation of actual emissions shall be based on the total operational time period within that five-year period.

(ii) **Time Periods Less Than Six Months**

Actual emissions for emission units operated for a period less than six months shall be based on the longest operating time period determined by the Air Pollution Control Officer to be most representative of actual operations.

(iii) **Adjustments For Determining Actual Emission Reductions**

The following adjustments shall be made in determining actual emission reductions:

(A) **Units Permitted and Operated Less Than Two Years**

If an emission unit has been permitted and operated for a period less than two years, the emission unit's actual emissions (in tons per year) shall be

calculated as the unit's actual emissions (in tons) that occurred during the actual operating time period multiplied by the actual operating time period in days divided by 1460 days.

(B) Adjustments for Rule Violations

If an emission unit was operated in violation of any District, state or federal law, rule, regulation, order or permit condition during the period used to determine actual emissions, the actual emissions shall be adjusted to reflect the level of emissions which would have occurred if the emission unit had not been in violation. Emissions in excess of a standard and which are authorized by a variance shall not be considered to be actual emissions.

(C) Adjustments for Federal Reasonably Available Control Technology (RACT)

Actual emission reductions shall not include emission reductions which would have occurred had RACT requirements, determined by the Air Pollution Control Officer to meet the requirements of the federal Clean Air Act, been applied. This provision shall not apply to emission reductions from an emission unit which is exempt from permit requirements pursuant to Rule 11. However, any ERCs created from actual emission reductions from such an exempt emission unit shall be discounted at the time of use by the emission reductions which would have occurred had RACT requirements, determined by the Air Pollution Control Officer to meet the requirements of the federal Clean Air Act, been applied. A condition shall be included on the ERC requiring such discounting from such an exempt emission unit to occur at the time of use of the ERC.

(D) Adjustments for Emission Reductions that are Not Surplus

Actual emission reductions shall not include emission reductions which are not surplus at the time the banking application is submitted.

(2) **ACTUAL EMISSION REDUCTIONS**

Actual emission reductions shall be calculated using actual emissions. An actual emission reduction must be real, surplus, enforceable, federally enforceable, quantifiable and may be permanent or temporary in duration. A temporary actual emission reduction shall be identified as temporary and shall include a specific date beyond which the reductions are no longer valid.

(i) **Shutdowns**

Actual emission reductions from the shutdown of an emission unit shall be calculated as the emission unit's actual emissions prior to its shutdown.

(ii) **Modified Emission Units**

Actual emission reductions from a modified emission unit shall be calculated as the emission unit's actual emissions before a complete application for Authority to Construct the proposed modification is filed with the Air Pollution Control District minus the emission unit's maximum permitted emissions after it is modified. The emission unit's expected actual emissions after modification shall be adjusted to reflect the modification and shall be based on the emission unit's same actual operating history as is used to determine the actual emissions before the application for Authority to Construct the proposed modification is filed with the District, unless the Air Pollution Control Officer agrees to the use of a different future operating scenario.

(e) **PROCESSING AN EMISSION REDUCTION CREDIT BANKING APPLICATION**

(1) **DETERMINATION OF A COMPLETE APPLICATION**

(i) A ERC banking application shall be deemed complete when the Air Pollution Control Officer determines sufficient information has been provided to evaluate the banking application.

(ii) ERC applicants shall not be required to fully implement the emission reduction or forfeit, modify, or cancel existing operating permits before the Air Pollution Control Officer determines the banking application is complete.

(iii) The Air Pollution Control Officer 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 Air Pollution Control Officer. Should the Air Pollution Control Officer fail to make a completeness determination within 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, the applicant may deem the application complete and so notify the Air Pollution Control Officer in writing.

(iv) If the Air Pollution Control Officer determines that the banking application is not complete, the applicant shall be notified in writing of the decision, the additional information that is required, and the date when the information must be submitted. If the information is not submitted by the specified date and no alternate date has been established with the applicant, the Air Pollution Control Officer may cancel the application with written notification to the applicant. Upon receipt of all requested information, the Air Pollution Control Officer shall have 30 calendar days to determine whether the application is complete.

(v) Upon determination that the banking application is complete, the Air Pollution Control Officer shall notify the applicant in writing within five working days of such determination and include the date the application was deemed complete.

(2) PRELIMINARY DECISION ON BANKING APPLICATION

Within 120 calendar days of a banking application being determined to be complete, the Air Pollution Control Officer shall perform an initial assessment of the application and render a preliminary decision whether to approve or deny the application. This 120 calendar day period may be extended by up to an additional 90 calendar days if agreed upon in writing by both the applicant and the Air Pollution Control Officer. Upon completion of this initial assessment, the Air Pollution Control Officer shall provide written notice of such preliminary decision to the applicant. If the preliminary decision is to approve the application, the notice shall include the proposed quantity and type of ERC proposed to be approved. If the preliminary decision is to approve the application for less ERCs than proposed by the applicant or to deny the application, the Air Pollution Control Officer shall provide an explanation of the preliminary decision.

(3) COMMENT PERIOD ON THE PRELIMINARY DECISION

Upon notification from the Air Pollution Control Officer of the preliminary decision concerning the banking application, the applicant shall be provided at least 30 calendar days to comment on the preliminary decision.

If the Air Pollution Control Officer's preliminary decision is to approve the banking application, the Air Pollution Control Officer shall also cause to be published on the public notice section of the Air Pollution Control District's web site, for the duration of the public comment period, a notice stating the Air Pollution Control Officer's preliminary decision to approve the banking of emission reductions and inviting written public comment for a 30 calendar day period following the date of publication. The notice shall also be published in at least one newspaper of general circulation in San Diego County. The Air Pollution Control Officer shall strive to make this 30-day comment period concurrent with the 30-day comment period provided to the applicant. After considering all such comments, the Air Pollution Control Officer shall make a final decision within 30 days of the close of the comment period.

(4) FINAL DECISION ON BANKING APPLICATION

Within 30 calendar days of receipt of comments from the applicant, the Air Pollution Control Officer shall approve or deny the banking application and notify the applicant in writing. If the final decision is to approve the application, the Air Pollution Control Officer shall issue an ERC certificate in accordance with the requirements of Rule 26.9.

(5) **APPEALS**

In the event the Air Pollution Control Officer denies a banking application, the applicant may, within 30 days of receipt of such denial, request the Hearing Board to hold a hearing, in accordance with the requirements of these rules and regulations, on whether the application was properly denied.

(6) **WITHDRAWAL OF A BANKING APPLICATION**

Withdrawal of a banking application by an applicant shall result in the cancellation of the application.