



Air Pollution Control Board
Greg Cox District 1
Dianne Jacob District 2
Pam Slater District 3
Ron Roberts District 4
Bill Horn District 5

Air Pollution Control District
R. J. Sommerville Director

DATE: October 22, 1997
TO: Air Pollution Control Board
SUBJECT: Adoption of Amendments to Rule 25 (Appeals), Repeal of Existing Rules 26.0 - 26.10 (Banking Rules) and Adoption of New Rules 26.0 - 26.10 (Banking Rules)

SUMMARY:

The District Banking Rules were adopted in 1983 allowing businesses to reduce emissions in excess of federal, state and District requirements and preserve those reductions in a "bank" for future use as emission offsets to satisfy District New Source Review rule (Rules 20.1 - 20.4) requirements. Banked emission reduction credits may also be sold to other business for this purpose. Emission offsets are emission reductions a new or modified businesses must provide to mitigate associated emission increases.

In 1996, businesses advised the District that the Banking Rules needed to be updated because they were no longer meeting their needs. Accordingly, the District formed a work group with business customers to address issues and solutions. As a result, the District is proposing to repeal the existing rules in their entirety and add new ones that have been restructured and retitled to be more user friendly and descriptive. The proposed revisions also increase banking opportunities for businesses and are consistent with federal emission offset requirements. A companion change to Rule 25 (Appeals) is also being proposed as a result of a request made by an environmental group to allow an aggrieved person to appeal a District banking decision to the Hearing Board. Currently, aggrieved persons can only appeal District permitting decisions.

Numerous work group meetings and a public workshop (April 18, 1997) were held on this proposal. A post-workshop meeting (September 19, 1997) was also held.

Issue

Should the Board amend Rule 25, repeal existing Rules 26.0 - 26.10 and adopt new Rules 26.0 - 26.10 implementing changes recommended by the District?

Recommendation

AIR POLLUTION CONTROL OFFICER:

Adopt the resolution amending Rule 25, repealing Rules 26.0 - 26.10 and adding new Rules 26.0 - 26.10 to the District Rules and Regulations and make appropriate findings:

- (i) of necessity, authority, clarity, consistency, non-duplication and reference as required by Section 40727 of the State Health and Safety Code;

SUBJECT: Amendment of Rule 25, Repeal of Existing Rules 26.0 - 26.10 and Adoption of New Rules 26.0 - 26.10

- (ii) that the amendment of Rule 25, repeal of Rules 26.0 - 26.10 and adoption of new Rules 26.0 - 26.10 will alleviate a problem and will promote attainment of ambient air quality standards (Section 40001 of the State Health and Safety Code);
- (iii) that an assessment of the socioeconomic impact of the proposed amendments, repeal and adoption of new rules is not required by Section 40728.5 of the State Health and Safety Code because the proposed amendments will not significantly affect air quality or emission limitations; and
- (iv) that it is certain there is no possibility that the proposed amendment of Rule 25, repeal of Rules 20.0 - 26.0 and adoption of new Rules 26.0 - 26.10 may have a significant adverse effect on the environment and that this action is exempt from the provisions of the California Environmental Quality Act pursuant to California Code of Regulations, title 14, section 15061(b)(3).

Alternative

The District is not aware of any desirable alternative revisions.

Advisory Statement

The Air Pollution Control District Advisory Committee recommended amending Rule 25, repealing existing Rules 26.0 - 26.10 and adding new Rules 26.0 - 26.10 at its September 24, 1997 meeting.

Fiscal Impact

Adopting the proposed rule will have no fiscal impact on the District.

Additional Information

Attachment I contains additional background information, information on compliance with Board policy on adopting new or amended rules, additional information on the Socioeconomic Impact Assessment, and information on compliance with the California Environmental Quality Act.

Attachment II contains the Resolution amending Rule 25, repealing Rules 26.0 - 26.10 and adding new Rules 26.0 - 26.10 .

Attachment III contains the report for the workshop held on April 18, 1997.

Concurrence:

Respectfully submitted,

LAWRENCE B. PRIOR III
Chief Administrative Officer

BY: ROBERT R. COPPER
Deputy Chief Administrative Officer


R. J. SOMMERVILLE
Air Pollution Control Officer

SUBJECT: Amendment of Rule 25, Repeal of Existing Rules 26.0 - 26.10 and Adoption of New Rules 26.0 - 26.10

COUNTY COUNSEL APPROVAL: Form and Legality ☒ Yes ☐ N/A
☐ Standard Form ☐ Ordinance ☒ Resolution

CHIEF FINANCIAL OFFICER/AUDITOR REVIEW: ☐ Yes ☒ N/A
4 VOTES: ☐ Yes ☒ No

CONTRACT REVIEW PANEL: ☐ Approved _____ ☒ N/A

PREVIOUS RELEVANT BOARD ACTION: 5/1/90 (APCB #1)

BOARD POLICIES APPLICABLE: N/A

CONCURRENCES: N/A

ORIGINATING DEPARTMENT: County of San Diego Air Pollution Control District

CONTACT PERSON: Richard Smith, Deputy Director (S50)694-3303 MS: 0-176


R. J. SOMMERVILLE, APCO
DEPARTMENT AUTHORIZED REPRESENTATIVE

OCTOBER 22, 1997
MEETING DATE

ATTACHMENT I

ADOPTION OF AMENDMENTS TO RULE 25 (APPEALS), REPEAL OF RULES 26.0 - 26.10 (BANKING RULES) AND ADOPTION OF NEW RULES 26.0 - 26.10 (BANKING RULES)

Additional Background Information

The District Banking rules were adopted in 1983 in collaboration with business representatives. Businesses reducing emissions in excess of federal, state and District requirements may apply to the District to bank those reductions as emission reduction credits. These credits may be preserved for future use as emission offsets to satisfy New Source Review rules requirements or sold to other businesses for this purpose. Emission offsets are emission reductions a new or modified businesses must provide to mitigate associated emission increases.

Businesses recently advised the District that these rules needed to be updated to be more user friendly and descriptive. Accordingly, the District formed a work group with business customers to address issues and solutions. Because the recommended changes are extensive, the existing Banking rules are proposed to be replaced by new rules. In addition, an environmental group commented at the workshop that Rule 25 does not allow the public to appeal a District banking decision, as is currently allowed for District permitting actions, and requested this rule be revised to authorize this. As a result, a change to Rule 25 is also being proposed allowing an aggrieved person to appeal a District banking decision to the Hearing Board.

Originally changes were developed to allow banked emission reduction credits to be used to satisfy state Best Available Retrofit Control Technology requirements. However, the state Air Resources Board recently adopted guidance for using credits for this purpose. As a result, the original approach needs to be modified to reflect this new guidance. Rather than delay other proposed changes until this could be done, stake holders agreed to delete the expanded use of banked credits and resolve it in a second phase of revisions in 1998.

Summary of Proposed Changes

Rule 25 is revised to allow an aggrieved person to appeal a District banking decision to the Hearing Board. This responds to a request at the workshop by an environmental group that the public be authorized to appeal a banking decision if they have taken an active role in providing comments on a proposed action to approve a banking application and disagree with the District's final action. Rule 25 currently authorizes such appeals of District permitting actions in accordance with state law.

Rule 26.0 has been revised to more closely parallel the format of the New Source Review rules. A separate banking application is no longer required for each emission unit and pollutant to be banked. Language has been added to allow the District to require a Permit to Operate if necessary to ensure emission reduction credit enforceability. Provisions have been added at the request of businesses requiring the District to maintain a list of State Implementation Plan and Regional Air Quality Strategy measures for which such credits may not be issued because they are not surplus to emission reductions already planned for implementation. A requirement has been added that the District include banked credits in its emissions inventory so they are considered for air quality planning purposes. Language has also been added to specify that previously banked credits will not change as a result of these proposed amendments.

In general, new definitions are consistent with those in the New Source Review rules. Additional definitions have been added as necessary. Language has been added to the "Surplus" definition to clarify that credits created by implementing emission reduction measures ahead of schedule shall expire on the date the reductions are required.

An Emission Reductions Calculations section has been added paralleling the emissions calculations specified in the New Source Review rules. Class A credits are required to be Actual Emission Reductions (e.g. they must be real, surplus, enforceable and quantifiable).

A Processing of a Banking Application section has been added. It lays out the time lines for processing a banking application. A 30-day period during which a banking applicant may appeal a District action to the Hearing Board has also been added. Finally, the requirement that equipment creating a credit must have a valid Permit to Operate has been deleted to allow businesses to bank emission reductions from nonpermitted equipment.

Rule 26.1 is retitled, Standards for Granting Emission Reduction Credits, and includes many requirements previously contained in Rule 26.2. It specifies general findings the District must make to approve a banking application. Emission reductions must actually take place, be surplus to other regulatory emission reduction requirements, be able to be quantified, and be enforceable to be classified as Class A credits. Language has been added requiring a source creating a credit to comply with any condition specified on the credit or any Permit to Operate condition imposed as a requirement for issuing the credit. This will help prevent abuses.

Rule 26.2 is retitled, Use of Emission Reduction Credits, and specifies that only Class A ERCs can be used as emission offsets. Class A ERCs must be "actual emission reductions" and meet other specified requirements.

Rule 26.3 is retitled, Reclassification of Emission Reduction Credits, and contains the requirements necessary to reclassify Class B credits to Class A. Class A credits meet all banking requirements and can be used to meet emission offsets requirements of the New Source Review rules. Class B credits do not meet all banking requirements and must be reclassified to Class A credits before they can be used as offsets.

Rule 26.4 is retitled, Permanency of Banked Emission Reduction Credits, and contains language specifying that credits are permanent until used by their owner. It also states that once a credit is issued, subsequent changes to local, state or federal laws or requirements do not affect the credit. Language has been added specifying that the District cannot confiscate banked credits.

Rule 26.5 is retitled, Transfer of Emission Reduction Credits, and deals primarily with the legalities associated with transferring credits from one party to another. It also describes the information to be provided when an credit transfer is made and how new credits are issued. It includes a warning to potential credit buyers that changes in state or federal requirements might affect state or federal acceptance of credits as offsets, and allows the District to advise potential credit purchasers of any state or federal changes that would put the use of such credits at risk.

Rule 26.6 is retitled, District Banking of Emission Reduction Credits, and contains the provisions associated with a District bank formerly in Rule 26.4. This allows the District to bank credits related to canceled, expired or retired permits if the former owner fails to do so within a two-year period. It also specifies allowable uses of District-banked credits consistent with those specified in the New Source Review rules.

Rule 26.7 is retitled, Shutdown and Related Emission Units, and specifies that equipment that was shutdown and a credit created cannot be operated if it is primarily for the purpose of replacing the same function or product manufacture as the equipment had before it was shutdown. This helps prevents a person from abusing these rules by shutting down equipment, creating a credit, selling the credit to another person who uses it as an emission offset, and restarting the shutdown (or similar) equipment and increasing emissions again. An exception is, if emission offsets have been provided or the credit canceled.

Rule 26.8 is retitled, Banking of Limited Emission Reductions, and allows emission reductions associated with control measures identified in the State Implementation Plan (SIP) or Regional Air Quality Strategies (RAQS) to be banked as Class A credits if they are implemented two years or more before they are required by a rule implementing the measure. They expire on the date they are actually required by the rule.

Rule 26.9 is retitled, Banking Certificates and the Emission Reduction Credit Register, and requires the District to issue certificates for approved ERCs and record them in a District-maintained ERC register.

Rule 26.10 is retitled, Banking for BRAC Military Base Closure or Realignment Actions, and incorporates the requirements of state law related to military base realignment and closure activities. It specifies how a base reuse authority may bank and use or sell emission reductions.

There are no known or anticipated issues with the Air Resources Board or the Environmental Protection Agency.

Compliance With Board Policy on Adopting New Rules

On February 2, 1993, the Board directed that, with the exception of a regulation requested by business or a regulation for which a socioeconomic impact assessment is not required, no new or revised regulation shall be implemented unless specifically required by federal or state law. The proposed amendment of Rule 25, repeal of Rules 26.0 - 26.10 and adoption of new Rules 26.0 - 26.10 are consistent with this Board directive because they have been requested by local businesses. Also, a socioeconomic impact assessment is not required.

Socioeconomic Impact Assessment

Section 40728.5 of the State Health and Safety Code requires the District to perform a socioeconomic impact assessment for new and revised rules and regulations significantly affecting air quality or emission limitations. The proposed amendment of Rule 25, repeal of existing Rules 26.0 - 26.10 and adoption of new Rules 26.0 - 26.10 will not affect air quality or emissions limitations. Therefore, a socioeconomic impact assessment is not required.

California Environmental Quality Act

The California Environmental Quality Act requires an environmental review for certain actions. No significant adverse impacts on the environment have been suggested for the proposed amendment of Rule 25, repeal of Rules 26.0 - 26.10 and adoption of new Rules 26.0 - 26.10, and it can be seen with certainty that no such impacts are possible. Therefore, amending Rule 25, repealing Rules 26.0 - 26.10 and adopting new Rules 26.0 - 26.10 are exempt from the provisions of the California Environmental Quality Act pursuant to California Code of Regulations, title 14, section 15061(b)(3).

RJSm:jo
9/22/97

Re Rules and Regulations of the)
Air Pollution Control District)
of San Diego County)

**RESOLUTION AMENDING RULE 25,
REPEALING EXISTING RULES 26.0 - 26.10 AND
ADDING NEW RULES 26.0 - 26.10 TO REGULATION II
OF THE RULES AND REGULATIONS OF THE
SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT**

On motion of Member Slater, seconded by Member Cox the following resolution is adopted:

WHEREAS, the San Diego County Air Pollution Control Board, pursuant to Section 40702 of the Health and Safety Code, adopted Rules and Regulations of the Air Pollution Control District of San Diego County; and

WHEREAS, said Board now desires to amend said Rules and Regulations; and

WHEREAS, notice has been given and a public hearing has been had relating to the amendment of said Rules and Regulations pursuant to Section 40725 of the Health and Safety Code.

NOW THEREFORE IT IS RESOLVED AND ORDERED by the San Diego County Air Pollution Control Board that the Rules and Regulations of the Air Pollution Control District of San Diego County be and hereby are amended as follows:

A. Proposed amendments to Rule 25 are to read as follows:

RULE 25. APPEALS

(a) Within 10 days after notice, by the Air Pollution Control Officer, of denial or conditional approval of an Authority to Construct, Permit to Operate, Permit to Sell or Rent, or renewal of a Permit to Operate with new or modified conditions, or Emission Reduction Credit (ERC) Certificate, the applicant may petition the Hearing Board, in writing, for a public hearing. Such request shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury. The Hearing Board, after notice and a public hearing held within 30 days after filing the petition, may sustain, reverse or modify the action of the Air Pollution Control Officer. Such order may be made subject to specified conditions.

(b) Within 10 days of any decision or action pertaining to the issuance of an Authority to Construct, Permit to Operate, temporary authorization, Permit to Sell or Rent, or renewal of a Permit to Operate with new or modified conditions, or Emission Reduction Credit Certificate, an aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in connection with the issuance of the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, may request the Hearing Board to determine whether the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, was properly issued. A request to the

Hearing Board shall be made by filing of a petition in accordance with the Rules and Regulations of the Hearing Board and payment of fees provided for in Rule 42 of the Rules and Regulations of the Air Pollution Control District. The request shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury. A copy of such request shall be served on the holder of the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, and the Air Pollution Control Officer no later than the day the request is filed with the Hearing Board. Within 30 days of the request, the Hearing Board shall hold a noticed public hearing and render a decision on whether the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, was properly issued in accordance with District Rules and Regulations.

(c) Within 10 days after notice by the Air Pollution Control Officer or the applicable delegated Transportation Demand Management (TDM) Program Administrator of a decision on an Average Vehicle Ridership (AVR) Report or a TDM Plan, the applicant may petition the Regional Hearing Board for the TDM Program, in writing, for a public hearing. Such request shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury. The Regional Hearing Board for the TDM Program, after notice and a public hearing held within 30 days after filing the petition, may sustain, reverse or modify the action of the Air Pollution Control Officer or the applicable delegated TDM Program Administrator. Such order may be made subject to specified conditions.

(d) (1) An aggrieved person who has filed a petition pursuant to Section (b) of this Rule may request the Hearing Board to stay the effect of the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, pending a decision of the Hearing Board on the petition. Any such request shall be in writing, shall state with reasonable particularity the grounds in support of the request and shall be signed under penalty of perjury. A copy of the Petition and request for stay shall be served personally on the holder of the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, and the Air Pollution Control Officer on the same day the request for stay is filed with the Hearing Board, but prior to the time the request is filed with the Hearing Board; provided, however, that service of the request on a holder of an Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, who does not maintain a fixed place of business within the District may be accomplished by mail. Proof of service on the holder of an Authority to Construct or permit or temporary authorization must accompany any request for a stay at the time such request is filed with the Hearing Board.

(2) A request for stay served and filed pursuant to Subsection (1) of Section (d) shall be heard, notice requirements permitting, at the next meeting of the Hearing Board at which time the Hearing Board shall determine whether the Authority to Construct permit, temporary authorization or Emission Reduction Credit Certificate, should be stayed until the final decision of the Hearing Board on the propriety of the issuance of the permit is rendered. If the notice requirements cannot be met for the next meeting of the Hearing Board, the stay request shall be heard at the following meeting of the Hearing Board. The person requesting the stay, the holder of the Authority to Construct or permit, temporary authorization or Emission Reduction Credit Certificate, and the Air Pollution Control Officer shall be given an opportunity to present evidence and arguments on the request for stay.

A request for stay shall have priority over other matters on the Hearing Board calendar.

(3) The Hearing Board shall stay the effect of an Authority to Construct or permit or temporary authorization pending final decision by the Hearing Board only if the Hearing Board finds that denial of the stay would likely result in the great or irreparable injury to an aggrieved person or the public. The decision of the Hearing Board on the stay shall be

served by the Clerk of the Hearing Board immediately on all parties and the Air Pollution Control Officer.

(e) With respect to an Authority to Construct or permit or temporary authorization for a modification of an existing permitted operation, any appeal or stay provided for in this rule shall apply only to the modification and not to the existing operation.

(f) Not later than three business days after receipt by the Air Pollution Control Officer of an appeal pursuant to Section (b) of this rule or a request for stay pursuant to Section (d) of this rule, the Air Pollution Control Officer or his designee shall attempt to schedule a meeting with the appellant and the permit holder to resolve the issues identified in the appeal or request for stay. If there is a resolution of the issues by the parties, the matter before the Hearing Board shall be withdrawn or dismissed. If all the issues are not resolved at the meeting, the District shall file a report with the Hearing Board detailing the resolved and unresolved issues and the District position on the unresolved issues.

(g) **EXEMPTIONS**

The provisions of this Rule 25 do not apply to:

(1) Annual renewal of permits or transfer of ownership provided permit conditions are not modified or revised. In the event permit conditions are modified or revised at the time of renewal, the provisions of this Rule 25 shall apply only to the modification or revision.

(2) A Permit to Operate required solely because of a change in permit exemptions stated in Rule 11 provided the article, machine, equipment or contrivance was installed at the time the applicable revisions to Rule 11 became effective and provided no modifications to the equipment are necessary to comply with District Rules and Regulations or applicable state and federal law. In the event a modification is necessary, the provisions of this Rule 25 shall apply only to the modification.

(h) **DEFINITIONS**

For purposes of this rule:

(1) **"Aggrieved person"** means any person, including a person or group representing the interest of the public in air quality, who alleges that the issuance of an Authority to Construct or permit or temporary authorization will infringe upon or deny such person's legal rights or the legal rights of the general public in respect to air quality.

(2) **"Appeared, submitted written testimony, or otherwise participated"** means communicating specific substantive or procedural air pollution issues to the Air Pollution Control District staff members who are responsible for Authority to Construct or permit issuance. Participation, wherever possible, should be documented in writing by the participant. The term does not include merely expressing general interest or concern or communicating orally, whether by telephone or otherwise, with Air Pollution Control District staff members who are not directly responsible for issuance of the Authority to Construct or permit or temporary authorization.

B. Proposed new Rules 26.0 - 26.10 are to read as follows:

1. RULE 26.0. BANKING OF EMISSION REDUCTION CREDITS (ERCs) - GENERAL REQUIREMENTS

(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 (*date of adoption*), 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 in at least one newspaper of general circulation within the County of San Diego 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 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.

2. RULE 26.1. STANDARDS FOR GRANTING EMISSION REDUCTION CREDITS (ERCs)

(a) GENERAL STANDARDS FOR GRANTING EMISSION REDUCTION CREDITS

The Air Pollution Control Officer shall deny a banking application unless the Air Pollution Control Officer determines that:

- (1) The emission unit that is the subject of the banking application is in compliance with all applicable rules and regulations.
- (2) The emission reductions occurred not more than five years before the date a banking application was filed with the Air Pollution Control Officer.
- (3) The emission reductions have been implemented and are in effect prior to issuance of the Emission Reduction Credit (ERC) certificate and entry of the ERC in the ERC register.
- (4) The emission reductions can be enforced through a condition contained in a Permit to Operate or ERC or through surrender and cancellation of a Permit to Operate. Once the Air Pollution Control Officer has indicated to the applicant that all requirements and procedures for approval of the banking application have been completed, the applicant shall surrender for modification, alteration, or cancellation the Permits to Operate from all sources which will supply the banked reduction. If a person does not comply with any permit condition imposed as a requirement for issuing an ERC or as necessary to ensure the validity of an ERC, the Air Pollution Control Officer may render that person's ERC and any use of the ERC by that person invalid. If any ERC condition imposed as a requirement for issuing the ERC or as necessary to ensure the validity of the ERC is not complied with, the Air Pollution Control Officer may render the ERC and any use invalid.
- (5) The emission reductions are actual emission reductions or can be classified as Class B ERCs.
- (6) All persons listed as holders and/or owners of the Permit to Operate for the emission unit providing the reduction either:
 - (i) have signed the banking application; or
 - (ii) provide a written waiver of any ownership interest in the banked reduction; or
 - (iii) are notified in writing by the applicant and the applicant satisfactorily demonstrates that the co-holder of the Permit to Operate is not entitled to an ownership interest in the banked reduction.

(b) STANDARDS FOR GRANTING CLASS A EMISSION REDUCTION CREDITS

ERCs shall be classified as either Class A or Class B ERCs. The applicant must demonstrate that an ERC is Class A rather than Class B. A reduction shall be classified as a Class A ERC if the requirements of Rule 26.1(a) are met, the emission reductions are actual emission reductions and:

- (1) The reduction is the result of a modification to, or limitation on use of, an existing emission unit such that after the reduction is made the emission unit will remain in service; or

(2) The reduction is the result of a shutdown and there will likely be no resulting emission increase by a replacement emission unit at the same or other stationary source within the District. If there will likely be only a partial emission increase at a replacement emission unit, the difference between the reduction at the shutdown emission unit and the likely emission increase at the replacement emission unit shall be eligible to be classified as Class A. An emission increase by a replacement emission unit will be deemed not likely to occur when the applicant demonstrates and the Air Pollution Control Officer agrees that:

(i) The products manufactured by or the materials processed through the emission unit to be shutdown are products or materials which will not likely be replaced by the manufacturing or processing of other products and materials by other new or existing replacement emission unit(s); and

(ii) Such replacement emission unit(s) is not or will not be located within the District; and

(iii) Emissions from such replacement emission unit(s) will likely not increase above the level of emissions at the replacement emission unit(s) prior to the shutdown; and

(iv) Any likely emission increase from such replacement emission unit(s) will likely be fully offset pursuant to these rules and regulations.

(c) CLASS B EMISSION REDUCTION CREDITS

Emission reductions that do not qualify as Class A ERCs and which satisfy the requirements of Rule 26.1(a) shall be classified as Class B ERCs. If the Air Pollution Control Officer classifies an ERC as Class B, the reasons for such classification shall be specified. Certificates evidencing ownership of Class B ERCs shall bear the following legend:

The emission reductions evidenced by this certificate have been conditionally placed in the ERC Register as Class B ERCs and have not been determined to be an actual emission reduction pursuant to these rules and regulations. These reductions are ineligible for any use until they have been reclassified to Class A ERCs.

(d) CONDITIONS TO ENSURE THE VALIDITY OF EMISSION REDUCTION CREDITS

The Air Pollution Control Officer may add conditions to any permit deemed necessary to ensure the validity of the ERC. Any permit condition imposed as a requirement for issuing an ERC or ensuring the validity of an ERC shall not be removed unless the ERC or another equivalent ERC is canceled by the owner of the permit, or unless the Air Pollution Control Officer determines that the condition is no longer necessary to ensure the validity of the ERC. The owner of such permit shall comply with any such conditions at all times unless specified otherwise in the permit conditions. If the validity of the ERC cannot be ensured by adding conditions to a permit, the Air Pollution Control Officer may add conditions to the ERC deemed necessary to ensure the validity of the ERC. In such case, any ERC condition imposed as a requirement for issuing an ERC or ensuring the validity of an ERC shall not be removed unless the ERC or an equivalent ERC is canceled by the owner of such ERC, or unless the Air Pollution Control Officer determines that the condition is no longer necessary to ensure the validity of the ERC.

3. RULE 26.2. USE OF EMISSION REDUCTION CREDITS (ERCs)

Class A ERCs shall only be eligible for use as emission offsets pursuant to District Rules and Regulations. Class B ERCs are ineligible for any use unless reclassified to Class A ERCs.

4. RULE 26.3. RECLASSIFICATION OF CLASS B EMISSION REDUCTION CREDITS (ERCs)

(a) RECLASSIFICATION IF CLASS A REQUIREMENTS ARE MET

An owner of a Class B ERC may apply at any time for reclassification of the ERC to Class A status. The application for reclassification shall be approved if the applicant satisfies the reason(s) given by the Air Pollution Control Officer as to why the ERC did not meet the requirements for a Class A ERC at the time of initial application.

(b) EQUIPMENT SHUTDOWN LIKELY TO BE REPLACED

If an ERC resulting from a shutdown is classified Class B in whole or in part for the reason that the Air Pollution Control Officer determines a new emission unit, which will manufacture products or process materials that will replace the products manufactured or materials processed by the emission unit which was shutdown, will likely be located within the District, the Air Pollution Control Officer shall, upon request, remove this reason if an application for Authority to Construct any such new emission unit within the District has not been filed within a period of two years following the date the District enters the ERC in the register.

(c) SURRENDER OF CLASS B CERTIFICATES

Prior to the reclassification of a Class B ERC to a Class A ERC, the owner(s) of the Class B ERC shall surrender the certificate or certificates evidencing ownership to the District for cancellation and issuance of a new Class A ERC certificate.

5. RULE 26.4. PERMANENCY OF BANKED EMISSION REDUCTION CREDITS (ERCs)

(a) PERMANENCY OF EMISSION REDUCTION CREDITS; GENERAL

Except as specified in Rules 26.1(a)(4), 26.1(d) and 26.8, ERCs contained in the ERC Register are permanent until used by the owner(s). After the issuance of the ERC certificate, subsequent changes in the regulations to require the same or similar type of reduction that was banked shall not reduce, eliminate, or otherwise affect banked ERCs.

(b) MORATORIUM ON FUTURE DEPOSITS OR WITHDRAWALS OF EMISSION REDUCTION CREDITS

Upon a recommendation by the Air Pollution Control Officer, the Air Pollution Control Board may declare a full or partial moratorium on future deposits or withdrawals of banked ERCs of a particular air contaminant. Before any moratorium may be imposed, the Air Pollution Control Board must provide a public notice and conduct a hearing to discuss the Air Pollution Control Officer's reasons for the moratorium. For a moratorium on withdrawals, the Air Pollution Control

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Officer must provide written notice to owners of ERC certificates for the applicable contaminants which will be affected.

(c) CONFISCATION OF EMISSION REDUCTION CREDITS

Except as specified in Rule 26.1(a)(4) the District shall not confiscate banked ERCs with an assigned ownership. ERC owners may donate their ERCs to the District for any purpose.

6. RULE 26.5. TRANSFER OF EMISSION REDUCTION CREDITS (ERCs)

(a) REQUIREMENTS TO TRANSFER EMISSION REDUCTION CREDITS; TRANSACTION DOCUMENTATION

ERCs may be transferred in whole or in part by written conveyance or by operation of law from one person to another. A copy of the written conveyance describing the transaction must be filed with the District and must contain all of the following:

- (1) Identification of the transferor(s) and transferee(s);
- (2) Agreement of the transferor(s) and transferee(s) to comply with all applicable conditions of the ERC certificate and all applicable requirements of District Rules and Regulations;
- (3) Agreement of transferor(s) and transferee(s) to comply with all conditions and recordkeeping requirements included in the ERC and associated permits that may be necessary to ensure the enforceability of the ERC;
- (4) The quantity of the ERC transferred;
- (5) The cost, in dollars per ton, of ERCs transferred; and
- (6) Signatures of the transferor(s) and transferee(s).

(b) NOTICE OF CHANGES WHICH COULD EFFECT EMISSION REDUCTION CREDIT VALIDITY

A buyer of an ERC should be aware that changes in state or federal law or regulations may affect the validity of an ERC or limit its use or value in whole or in part. If the Air Pollution Control Officer is aware of a potential buyer of such an ERC, the Air Pollution Control Officer may inform the potential buyer before a transfer is made of current or potential changes in laws or regulations that may affect the validity of the ERC.

(c) ISSUANCE OF NEW CERTIFICATE UPON TRANSFER

The Air Pollution Control Officer shall issue a new ERC certificate in the name of the new owner(s) for the quantity of ERC being transferred. If a portion of an ERC certificate is transferred, a new ERC certificate shall also be issued to the owner(s) for the remaining part of the ERCs. Before the transfer can be considered to be complete, the old owner shall surrender to the Air Pollution Control Officer the certificate for the ERC that is to be transferred to the new owner.

(d) ENFORCEABILITY OF TRANSFERRED EMISSION REDUCTION CREDITS AGAINST THIRD PARTIES

Health and Safety Code Section 40711(b) is applicable to the enforceability of transferred ERCs against third parties.

(e) ADVISORY OPINION ON CLASS B EMISSION REDUCTION CREDITS

Any person considering the transfer of a Class B ERC may apply to the Air Pollution Control Officer for an advisory opinion as to whether the Class B ERC may be eligible for reclassification to Class A status. The Air Pollution Control Officer shall not be precluded from departing from the advisory opinion at the time the person applies to reclassify the ERC to Class A status if additional material facts are discovered or the original material facts supplied by the applicant were incorrect or incomplete.

7. RULE 26.6. DISTRICT BANKING OF EMISSION REDUCTION CREDITS (ERCs)

(a) REQUIREMENTS

The District may bank emission reductions as Class A ERCs from any source according to the following requirements:

(1) Emission reductions occurring more than five years before the date the emission reductions are added to the District Bank shall not be eligible to be banked.

(2) The quantity of actual emission reductions eligible to be banked shall be determined in accordance with the requirements of Rule 26.0(d). The actual emission reductions shall also comply with the requirements of Rule 26.1 as they would apply at the time the reductions occurred.

(3) The District may bank emission reductions resulting from the cancellation, expiration or retirement of a Permit to Operate. If the former permit holder renews an expired or retired Permit to Operate within 180 days from the date the Permit to Operate expired or was retired and the District has added the resulting ERCs to the District Bank, the District shall cancel an equivalent amount of ERCs from the District Bank as were added as a result of the expiration or retirement. Upon written request of the former permit holder, the District shall extend the 180 day period an additional 90 days. If the former permit holder files an application to bank the emission reductions within two years of the date the Permit to Operate was cancelled, expired or was retired and the District determines Class A ERCs should be granted, the District shall cancel an equivalent amount of ERCs from the District Bank as were added as a result of the cancellation, expiration or retirement when the Class A ERCs are granted. The former permit holder's right to bank such reductions shall be terminated two years after the date the Permit to Operate was cancelled, expired or was retired.

(4) If the owner files an application for a Permit to Operate the emission unit for which a Permit to Operate expired or was retired and for which the District banked the associated emission reductions, the District shall cancel the resulting banked ERCs or shall cancel an equivalent amount of ERCs from the District Bank. These provisions shall not apply if such application is filed one year or more after the Permit to Operate expired or was retired.

(5) ERCs from the District Bank shall not be transferred or banked by the recipient and shall be returned to the District Bank by the District in the event they are no longer required as offsets for the emission unit for which they were issued.

(b) USE OF DISTRICT EMISSION REDUCTION CREDITS

The use of District Bank ERCs shall be prioritized in the following order. In order to make this prioritization, the Air Pollution Control Officer shall determine, based on a review of the District's permit program for the previous calendar year, the amount of emission reductions credits from the District Bank which are to be allocated for each category:

(1) For use to demonstrate compliance with the no net increase permit program provisions of the California Clean Air Act,

(2) For use by essential public service projects, as defined in Rule 20.1 and as provided for in Rule 20.2(d)(5)(iii),

(3) For use for emission control equipment as provided for in Rule 20.2(d)(5)(iv),

(4) For use for emission control equipment as provided for in Rule 20.3(d)(5), and

(5) For any other purpose approved by the Air Pollution Control Board and in conformity with state and federal laws and requirements.

(c) REIMBURSEMENT OF DISTRICT COSTS

Users of District-owned ERCs and persons using information developed by the District to apply for an ERC already banked by the District shall reimburse the District for its costs in creating and processing the ERCs, as determined by the Air Pollution Control Officer, unless the Air Pollution Control Board directs such reimbursement shall be waived.

8. RULE 26.7. SHUTDOWN AND RELATED EMISSION UNIT

(a) OPERATION OF A PREVIOUSLY SHUTDOWN EMISSION UNIT

A person shall not operate or cause to be operated within the District any emission unit which was shutdown and for which a corresponding ERC was granted unless all requirements of these rules and regulations, including Rules 20.1 through 20.4, have been met and:

(1) The person demonstrates to the satisfaction of the Air Pollution Control Officer that operation of such previously shutdown emission unit is not for the primary purpose of replacing the same function or manufacturing the same product as that emission unit did before it was shutdown; or

(2) Actual emission reductions are provided or Class A ERCs canceled in an amount equivalent to the ERC that was granted for the shutdown emission unit, or the ERC issued for the shutdown emission unit is canceled.

**(b) CONSTRUCTION OR OPERATION OF AN EMISSION UNIT
DIRECTLY RELATED TO AN EMISSION UNIT THAT WAS SHUTDOWN**

A person shall not construct or operate any new emission unit, or modify or operate any existing emission unit, which the Air Pollution Control Officer determines is for the primary purpose of replacing the same function or manufacturing the same product as an emission unit which was shutdown and for which a corresponding ERC was granted, and which the Air Pollution Control Officer determines is related to the same function or product manufacturing previously accomplished by the shutdown emission unit, unless:

- (1) All requirements of these rules and regulations have been met; and
- (2) Actual emission reductions are provided or Class A ERCs canceled in an amount equivalent to the ERC that was granted for the shutdown emission unit, or the ERC issued for the shutdown emission unit is canceled. Emission reductions provided or ERCs canceled pursuant to this Section do not qualify as emission reductions or emission offsets for any other purpose.

9. RULE 26.8. BANKING OF LIMITED EMISSION REDUCTIONS

**(a) LIMITED EMISSION REDUCTION CREDITS (ERCS) RESULTING
FROM EARLY IMPLEMENTATION OF STATE IMPLEMENTATION PLAN
(SIP) OR REGIONAL AIR QUALITY STRATEGY (RAQS) CONTROL
MEASURES**

Emission reductions which are the result of the applicant's implementation of a SIP or RAQS control measure(s) may be banked as long as the reductions required by the SIP or RAQS control measure(s) are scheduled to take place at a date two years or more from the date of application for banking credits and the reductions can be classified as Class A. The ERCs created by such banked reduction shall expire on the date that the reductions identified by the SIP or RAQS control measure are actually required to take place. The Permit to Operate for any source which has used an ERC of the type described in this section to satisfy in whole or in part the requirements of District Rules and Regulations shall expire and become void on the date that the reductions required by the SIP or RAQS control measure take place unless other Class A ERCs of equivalent amount are canceled.

(b) LIMITED DURATION EMISSION REDUCTION CREDITS

Any applicant for banking may request that Class A ERCs issued for emission reductions from an emission unit be of limited duration such that the ERCs would expire at a date specified by the applicant one year or later from the date of the application for banking is approved by the District. The Permit to Operate for any source which has used such ERCs to satisfy in whole or in part the requirements of District Rules and Regulations shall expire and become void on the date specified as the expiration date of the ERCs unless the holder of the permit on or before the expiration date obtains additional Class A ERCs in an amount equal to the amount supplied by the ERCs. Upon the expiration of such a Permit to Operate, the source which supplied the emission reduction for the ERC of limited duration shall be entitled to a revision of its permit to reflect the terms of the permit before the banking took place.

(c) NOTATION OF LIMITED DURATION

The ERCs and Permits to Operate of the type described in Sections (a) and (b) of this rule shall contain a legend describing the fact of their limited duration and their date of expiration.

(d) WAIVER OF APPLICATION FOR VARIANCE

The applicant for limited ERCs under this rule shall expressly waive the applicant's right, if any, to apply to the Hearing Board for a variance to extend the term of the ERC beyond the date specified pursuant to this rule. Any transferee of a limited ERC shall acknowledge in writing to the District that the transferee has been apprised of and joins in the waiver.

10. RULE 26.9. EMISSION REDUCTION CREDIT CERTIFICATES AND THE EMISSION REDUCTION CREDIT REGISTER

(a) EMISSION REDUCTION CREDIT APPROVAL: CERTIFICATE ISSUANCE AND REGISTRATION

Upon approval by the Air Pollution Control Officer of an ERC banking application, such reductions shall be recorded in an ERC register and the Air Pollution Control Officer shall issue a certificate evidencing ownership of such banked reductions to the owner(s) of the ERC. The owner or owners of approved ERCs have the exclusive right to use them and to authorize their use. Certificates evidencing ownership of approved reductions shall not constitute instruments, securities, or any other form of property.

(b) EMISSION REDUCTION CREDIT CERTIFICATES

ERC Certificates shall be issued by the District for approved ERCs and shall contain, at a minimum:

- (1) The owner(s) of the ERC;
- (2) The application number that resulted in the ERC;
- (3) The ERC certificate identification number, date of issuance, pollutant(s) reduced, quantity of actual emission reductions, the time period for which the ERC is valid;
- (4) Any conditions necessary to issue the ERC and ensure compliance with the requirements of these rules and regulations;
- (5) Any records that may be required as a condition of ERC issuance;
- (6) A statement of whether the ERC is Class A or Class B;
- (7) A statement regarding the potential invalidation of the ERC certificate if it is determined by the Air Pollution Control Officer that the conditions are not being complied with or the ERC was fraudulently acquired, and absolving the District from any liability from any transaction involving the ERC certificate; and,
- (8) Identification of the source of the reductions from which the ERCs were generated and the location of such source.

(c) EMISSION REDUCTION CREDIT REGISTER

An ERC register shall be maintained by the District and shall record, at a minimum:

- (1) The current ownership, including the name, address, and phone number of the registered owner(s);
- (2) The amount and type of pollutant, and the date of ERC issuance;
- (3) The Class A or Class B status of each ERC;
- (4) The limited duration and expiration date, if any, of each ERC;
- (5) The complete physical description, including serial number, make, type, and Permit to Operate number of the emission unit which has been shutdown or modified to supply the banked reductions;
- (6) The application number and ERC certificate identification number;
- (7) A copy of the ERC certificate;
- (8) The status of the ERC (e.g., being used, transferred, or held); and,

If any current or future changes in federal or state laws, rules, regulations or requirements would render an ERC invalid, the Air Pollution Control Officer shall note this in the ERC register for that ERC together with the potential impact on the quantity or quality of the ERC.

(d) REGISTRATION OF TRANSFERRED EMISSION REDUCTION CREDITS

If an ERC is transferred, the ERC register shall include, in addition to the information specified in Section (c), the original ERC certificate number, the name of the transferrer, the name of the transferee and the new ERC certificate number.

(e) PUBLIC INSPECTION OF EMISSION REDUCTION CREDIT REGISTER

The ERC register shall be open to public inspection.

11. RULE 26.10. BANKING FOR BRAC MILITARY BASE CLOSURE OR REALIGNMENT ACTIONS

(a) EMISSION REDUCTION CREDIT BANKING APPLICATION SUBMITTAL FROM BRAC MILITARY BASE

An appropriate entity of the federal government may apply to the District for ERCs that result from emission reductions from a BRAC military base within 180 days of the reduction in emissions. The District shall evaluate such application to bank consistent with these rules and regulations and Section 40709.7 of the State Health and Safety Code.

(b) OWNERSHIP OF BRAC MILITARY BASE EMISSION REDUCTION CREDITS

If the federal government has agreed in writing to allow a base reuse authority to apply for and receive the ERCs, or if the time period for the federal government to apply for ERCs pursuant to Subsection (a) has expired and the federal government has not applied for the ERCs, or if the base reuse authority has, pursuant to other legal means, obtained the authority to acquire the ERCs, the base reuse authority may apply to bank any emission reductions related to the termination or reduction of operations at the BRAC military base under its jurisdiction. The District shall evaluate any such application to bank consistent with these rules and regulations and Section 40709.7 of the State Health and Safety Code. After registration and certification of the emission reductions, the base reuse authority shall be deemed the owner of the ERC for purposes of issuance of a certificate. Upon receipt of the certificate, the base reuse authority may use, sell, or otherwise dispose of the ERCs as determined by the base reuse authority, provided that the credits may only be used for base reuse within the jurisdiction of the District.

IT IS FURTHER RESOLVED AND ORDERED that the subject amendments to Rule 25, the repeal of existing Rules 26.0 - 26.10 and the addition of new Rules 26.0 - 26.10 to Regulation II shall take effect upon adoption.

PASSED AND ADOPTED by the Air Pollution Control Board of the San Diego County Air Pollution Control District, State of California, this 22nd day of October, 1997 by the following votes:

AYES: Cox, Jacob, Slater, Roberts, Horn

NOES: None

ABSENT: None

APPROVED AS TO FORM AND LEGALITY
OF THE COUNSEL

BY

L. Dutton

DEPUTY

I hereby certify that the foregoing is a full, true and correct copy of the Original Resolution which is now on file in my office.

THOMAS J. PASTUSZKA
Clerk of the Air Pollution Control Board

By Frank V. Galang
Frank V. Galang, Deputy



This is a true certified copy of the original document on file or of record in my office. It bears the seal of the County of San Diego and signature of the Clerk of the Board of Supervisors, impointed in purple ink.

Thomas J. Pastuszka
Clerk of the Board, San Diego County, California

Date 10/23/97 By Deputy Frank V. Galang



Resolution No. 97-336
10/22/97 (APCD 1)

AIR POLLUTION CONTROL DISTRICT
COUNTY OF SAN DIEGO

PROPOSED AMENDMENTS TO RULE 25
CHANGE COPY

Proposed amendments to Rule 25, Sections (a), (b) and (d) are to read as follows:

RULE 25. APPEALS

(a) Within 10 days after notice, by the Air Pollution Control Officer, of denial or conditional approval of an Authority to Construct, Permit to Operate, Permit to Sell or Rent, or renewal of a Permit to Operate with new or modified conditions, or Certificate of Emission Reduction Credit (ERC) Certificate, the applicant may petition the Hearing Board, in writing, for a public hearing. Such request shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury. The Hearing Board, after notice and a public hearing held within 30 days after filing the petition, may sustain, reverse or modify the action of the Air Pollution Control Officer. Such order may be made subject to specified conditions.

(b) Within 10 days of any decision or action pertaining to the issuance of an Authority to Construct, Permit to Operate, temporary authorization, Permit to Sell or Rent, or renewal of a Permit to Operate with new or modified conditions, or Emission Reduction Credit Certificate, an aggrieved person who, in person or through a representative, appeared, submitted written testimony, or otherwise participated in connection with the issuance of the Authority to Construct or permit, or temporary authorization or Emission Reduction Credit Certificate, may request the Hearing Board to determine whether the Authority to Construct or permit, or temporary authorization or Emission Reduction Credit Certificate, was properly issued. A request to the Hearing Board shall be made by filing of a petition in accordance with the Rules and Regulations of the Hearing Board and payment of fees provided for in Rule 42 of the Rules and Regulations of the Air Pollution Control District. The request shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury. A copy of such request shall be served on the holder of the Authority to Construct or permit, or temporary authorization or Emission Reduction Credit Certificate, and the Air Pollution Control Officer no later than the day the request is filed with the Hearing Board. Within 30 days of the request, the Hearing Board shall hold a noticed public hearing and render a decision on whether the Authority to Construct or permit, or temporary authorization or Emission Reduction Credit Certificate, was properly issued in accordance with District Rules and Regulations.

(c) Within 10 days after notice by the Air Pollution Control Officer or the applicable delegated Transportation Demand Management (TDM) Program Administrator of a decision on an Average Vehicle Ridership (AVR) Report or a TDM Plan, the applicant may petition the Regional Hearing Board for the TDM Program, in writing, for a public hearing. Such request shall state with reasonable particularity the grounds therefor and shall be signed under penalty of perjury. The Regional Hearing Board for the TDM Program, after notice and a public hearing held within 30 days after filing the petition, may sustain, reverse or modify the action of the Air Pollution Control Officer or the applicable delegated TDM Program Administrator. Such order may be made subject to specified conditions.

(d) (1) An aggrieved person who has filed a petition pursuant to Section (b) of this Rule may request the Hearing Board to stay the effect of the Authority to Construct or permit, or temporary authorization or Emission Reduction Credit Certificate, pending a decision of the Hearing Board on the petition. Any such request shall be in writing, shall state with

reasonable particularity the grounds in support of the request and shall be signed under penalty of perjury. A copy of the Petition and request for stay shall be served personally on the holder of the Authority to Construct or permit, or temporary authorization or Emission Reduction Credit Certificate, and the Air Pollution Control Officer on the same day the request for stay is filed with the Hearing Board, but prior to the time the request is filed with the Hearing Board; provided, however, that service of the request on a holder of an Authority to Construct or permit, or temporary authorization or Emission Reduction Credit Certificate, who does not maintain a fixed place of business within the District may be accomplished by mail. Proof of service on the holder of an Authority to Construct or permit, or temporary authorization or Emission Reduction Credit Certificate, must accompany any request for a stay at the time such request is filed with the Hearing Board.

(2) A request for stay served and filed pursuant to Subsection (1) of Section (d) shall be heard, notice requirements permitting, at the next meeting of the Hearing Board at which time the Hearing Board shall determine whether the Authority to Construct or permit, or temporary authorization or Emission Reduction Credit Certificate, should be stayed until the final decision of the Hearing Board on the propriety of the issuance of the permit is rendered. If the notice requirements cannot be met for the next meeting of the Hearing Board, the stay request shall be heard at the following meeting of the Hearing Board. The person requesting the stay, the holder of the Authority to Construct or permit, or temporary authorization or Emission Reduction Credit Certificate, and the Air Pollution Control Officer shall be given an opportunity to present evidence and arguments on the request for stay.

A request for stay shall have priority over other matters on the Hearing Board calendar.

(3) The Hearing Board shall stay the effect of an Authority to Construct or permit or temporary authorization pending final decision by the Hearing Board only if the Hearing Board finds that denial of the stay would likely result in the great or irreparable injury to an aggrieved person or the public. The decision of the Hearing Board on the stay shall be served by the Clerk of the Hearing Board immediately on all parties and the Air Pollution Control Officer.

(e) With respect to an Authority to Construct or permit or temporary authorization for a modification of an existing permitted operation, any appeal or stay provided for in this rule shall apply only to the modification and not to the existing operation.

(f) Not later than three business days after receipt by the Air Pollution Control Officer of an appeal pursuant to Section (b) of this Rule or a request for stay pursuant to Section (d) of this rule, the Air Pollution Control Officer or his designee shall attempt to schedule a meeting with the appellant and the permit holder to resolve the issues identified in the appeal or request for stay. If there is a resolution of the issues by the parties, the matter before the Hearing Board shall be withdrawn or dismissed. If all the issues are not resolved at the meeting, the District shall file a report with the Hearing Board detailing the resolved and unresolved issues and the District position on the unresolved issues.

(g) EXEMPTIONS

The provisions of this Rule 25 do not apply to:

(1) Annual renewal of permits or transfer of ownership provided permit conditions are not modified or revised. In the event permit conditions are modified or revised

at the time of renewal, the provisions of this Rule 25 shall apply only to the modification or revision.

(2) A Permit to Operate required solely because of a change in permit exemptions stated in Rule 11 provided the article, machine, equipment or contrivance was installed at the time the applicable revisions to Rule 11 became effective and provided no modifications to the equipment are necessary to comply with District Rules and Regulations or applicable state and federal law. In the event a modification is necessary, the provisions of this Rule 25 shall apply to the modification.

(h) **DEFINITIONS**

For the purposes of this rule:

(1) **“Aggrieved Person”** means any person, including a person or group representing the interest of the public in air quality, who alleges that the issuance of an Authority to Construct or permit or temporary authorization will infringe upon or deny such person’s legal rights or the legal rights of the general public in respect to air quality.

(2) **“Appeared, Submitted Written Testimony, or Otherwise Participated”** means communicating specific substantive or procedural air pollution issues to the Air Pollution Control District staff members who are responsible for Authority to Construct or permit issuance. Participation, wherever possible, should be documented in writing by the participant. The term does not include merely expressing general interest or concern or communicating orally, whether by telephone or otherwise, with Air Pollution Control District staff members who are not directly responsible for issuance of the Authority to Construct or permit or temporary authorization.

AIR POLLUTION CONTROL DISTRICT
SAN DIEGO COUNTY

RULES 26.0 - 26.10 - BANKING

WORKSHOP REPORT

A workshop notice was mailed to all District permit holders. Notices were also mailed to all Economic Development Corporations and Chambers of Commerce in San Diego County, the U.S. Environmental Protection Agency (EPA), the California Air Resources Board (ARB), and other interested parties.

The workshop was held on April 18, 1997, and was attended by approximately 28 people. The comments and District responses are as follows:

1. WORKSHOP COMMENT

The District should broaden emission offset opportunities from mobile, indirect, and area sources as well as the stationary sources covered by these Rules (26.0 - 26.10).

DISTRICT RESPONSE

Banking of emission reductions from mobile sources is addressed in District Rule 27 (Banking of Mobile Source Emission Reduction Credits). The District's Air Resources and Strategy Development section is responsible for and has expertise in emissions related to indirect and area sources. They will be advised there is interest in developing a process by which emission reductions from indirect and area sources can be banked and preserved for future use. The District encourages suggestions for broadening opportunities to create additional Class A emission reduction credits from stationary sources.

2. WORKSHOP COMMENT

New Jersey allows emission reduction credits for increased energy efficiency. The District should consider this also.

DISTRICT RESPONSE

The District would consider granting emission reduction credits resulting from increased energy efficiency if such reductions meet all requirements for granting emission reduction credits specified in Rules 26.0 - 26.10. The ability to demonstrate that such emission reductions are permanent and enforceable would be key requirements and would be of concern. The District has been unsuccessful in obtaining regulatory requirements from the state of New Jersey documenting that emission reduction credits can be granted for increased energy efficiency. The commentor has been requested to provide this information to the District.

3. WORKSHOP COMMENT

The District should allow the use of emission reduction credits from upwind districts to satisfy local offset requirements.

DISTRICT RESPONSE

Currently, state Health and Safety Code §40709.6 allows emission reductions in an upwind California air district to be used to offset emission increases in a downwind district if specified conditions are met. One such condition is that the downwind District adopt a rule to discount the emission reductions credited to the source in the upwind district. The District cannot do so until the appropriate discount factor is resolved with the EPA and ARB. The District has been working with the EPA (Region IX) for over a year to establish this discount factor. When agreement is reached, the District will revise its New Source Review rules to incorporate an appropriate discount factor and allow emission reductions in upwind districts to be used as offsets in San Diego county in accordance with state law and local requirements. Appropriate safeguards to ensure abuses do not occur will be incorporated into the New Source Review rules at that time. It is unlikely any changes to the Banking rules will be needed.

4. WORKSHOP COMMENT

Can emission reduction credits be created from portable equipment?

DISTRICT RESPONSE

Rule 26.0(a) - Applicability specifies that the Banking rules are applicable to any person owning, transferring, or using stationary source emission reduction credits. For purposes of the Banking Rules 26.0 - 26.10, portable equipment is considered a stationary source. Therefore, emission reduction credits can be created from eligible emission reductions from portable equipment. However, ensuring that those emission reductions will be real, permanent and enforceable will be challenging.

5. WORKSHOP COMMENT

Would these rules allow the use of emission reduction credits in lieu of state Best Available Retrofit Control Technology (BARCT)?

DISTRICT RESPONSE

The current Banking rules restrict emission reduction credits for use only as emission offsets. One of the changes proposed by the District would have allowed emission reduction credits to be used for any purpose authorized by federal, state or district requirements. Therefore, banked emission reduction credits could have been used in lieu of state Best Available Retrofit Control Technology requirements in accordance with applicable provisions of the state Health and Safety Code. The rules specifying use of BARCT would also need to be revised to allow the use of emission reduction credits in lieu of BARCT.

However, at the workshop, the Air Resources Board advised the District that the proposed Banking Rules 26.0 - 26.10 will need to be revised to incorporate recent ARB requirements for interchangeable credits pursuant to AB1777 if the District removes the language allowing emission reduction credits to be used only as emission offsets to satisfy New Source Review requirements. Since meeting these requirements will require additional time to develop appropriate revisions to the Banking rules and these revisions will need to be reviewed at a public workshop, the District has decided to retain the language limiting use of emission reduction credits to only as emission offsets to satisfy New Source Review requirements. The District will revise the Banking rules to incorporate the new state AB1777 requirements in the next round of Banking rule revisions expected to start at the end of 1997. It should be noted that, to date, local businesses have expressed little interest in the use of ERCs in lieu of BARCT.

6. WORKSHOP COMMENT

It is unclear whether subsection (v) of the "Surplus" definition would allow temporary emission reduction credits only until the emission reductions were required by a District rule or regulation.

DISTRICT RESPONSE

Subsection (v) of the "Surplus" definition [Rule 26.0(c)(23)] would allow temporary emission reduction credits only until the emission reductions were required by a District rule or regulation. The following language has been added to clarify this: "Any emission reduction credits created from such emission reductions shall expire on the date the reductions are actually required by the District Rule or Regulation to take place." For consistency, this language has also been added to Subsection (vi). Language has also been added to Subsection (v) of the Surplus definition to clarify that if a workshop has been noticed prior to receipt of the banking application, the associated emission reductions are not surplus.

7. WORKSHOP COMMENT

Why does the District specify a period of two years in subsection (v) of the "Surplus" definition?

DISTRICT RESPONSE

This date was selected based on the fact that it can take an average of a year from the date a workshop is publicly noticed to the date a rule or regulation is adopted by the Air Pollution Control Board if the rule or regulation is subject to the California Environmental Quality Act and a socioeconomic impact assessment is required. This time period is longer if there are issues to be resolved locally with stakeholders or with the EPA or ARB. This date was generally agreeable to both the District and stakeholders in the Banking rules development.

8. WORKSHOP COMMENT

The last paragraph of the "Surplus" definition appears to be in conflict with state (Health and Safety Code §40709) and federal law (CAA Section 173(c)(2)) in that it allows emission reductions of toxic air contaminants to be used as offsets even though the toxic air contaminant emission reductions may be required by other state, federal or district regulatory requirements.

DISTRICT RESPONSE

State Health and Safety Code §40709 specifies that a district's banking system "shall provide that only those reductions in the emission of air contaminants which are not otherwise required by federal, state, or district law, rule, order, permit, or regulation shall be registered, certified, or otherwise approved by the district air pollution control officer before they may be banked and used to offset future increases in the emission of air contaminants." Federal Clean Air Act Section 173(c)(2) specifies that "Emission reductions otherwise required by this Act shall not be creditable as emission reductions for purposes of any such offset requirement." While the District strongly believes it was not the intent of the state Legislature or federal Congress to prevent emission reductions resulting from non-ozone control program requirements (e.g. MACT requirements) from being used as offsets for ozone precursors, the District believes that the cited sections of state and federal law appear to preclude such use. Accordingly, the District has deleted that last paragraph of the definition of "Surplus".

9. WORKSHOP COMMENT

The last paragraph of the "Surplus" definition and subsection (ii) of this definition appear to be in conflict with each other regarding Section 112 of the federal CAA.

DISTRICT RESPONSE

Please see the response to Comment #8.

10. WORKSHOP COMMENT

The last paragraph of the "Surplus" definition appears to be in conflict with the definition of "Surplus" in District Rule 1200.

DISTRICT RESPONSE

The definition of "Surplus" in Rule 1200 is unrelated to the Banking rules. This definition specifies that emission reductions required by federal MACTs or state ATCMs will not be allowed (considered "surplus") if a source is providing concurrent emission reductions. The last paragraph of the "Surplus" definition in Rule 26.0 specifies that emission reductions that are made to satisfy toxic air contaminant emission reduction requirements may be banked as volatile organic compounds or particulate matter if those emission reductions also qualify as volatile organic compounds or particulate matter emission reduction credits. However, the "Surplus" definition in Rule 1200 specifies that such emission reductions that may be required by Sections 111 or 112 of the federal Clean Air Act shall not be considered surplus for purposes of creating toxic air contaminant emission reduction credits. Notwithstanding this, the District has deleted the last paragraph of the definition of "Surplus" in Rule 26.0. Please also see the response to Comment #8.

11. WORKSHOP COMMENT

AB1777 includes a definition of "Surplus" which the District should consider using.

DISTRICT RESPONSE

The District has reviewed the definition of "Surplus" in AB1777 and determined that it is not as detailed and specific as the definition currently proposed in Rule 26.0(c)(23). Because local businesses and District staff have requested that this definition contain sufficient detail to enable a banking applicant to readily determine whether an emission reduction is in excess of current or proposed regulatory requirements, the District has retained the currently proposed definition of "Surplus."

12. WORKSHOP COMMENT

The District should ensure consistency between the New Source Review rules and Banking rules for definitions such as "Quantifiable", "Surplus", "Real", and "Federal Enforceability."

DISTRICT RESPONSE

"Federally Enforceable" - For consistency, the definition of "Federally Enforceable" in Rule 26.0 will be replaced by applicable portions of the definition of "Federally Enforceable" in the New Source Review rules. In addition, the definition of "Enforceable" in the New Source Review rules will be included as a new definition in Rule 26.0.

"Quantifiable" - For consistency, the definition of "Quantifiable" in Rule 26.0 will be replaced by the definition of "Quantifiable" in the New Source Review rules.

"Real" - For consistency, the phrase "as determined by the Air Pollution Control Officer" in the definition of "Real" in Rule 26.0 will be added to the definition of "Real" in the New Source Review rules.

"Reasonably Available Control Technology" - A definition of "Reasonably Available Control Technology" will be added to the New Source Review rules consistent with the definition of "Reasonably Available Control Technology" in Rule 26.0.

"Surplus" - The definition of "Surplus" in the New Source Review rules will be revised to include the specificity of the definition of "Surplus" in Rule 26.0.

"Temporary" - The definition of "Temporary" in the New Source Review rules will be revised consistent with the definition of "Temporary" in Rule 26.0.

13. WORKSHOP COMMENT

Are "Synthetic Minor" limits on a permit considered federally enforceable?

DISTRICT RESPONSE

EPA believes such limits need to be federally enforceable. However, due to recent court rulings, EPA is only requiring that such limits be legally and practically enforceable by a state or local permitting agency. Future EPA rulemaking could reinstate the requirement for federal enforceability.

14. WORKSHOP COMMENT

How does the definition of "Replacement Emission Unit" in Rule 26 relate to the waiver from New Source Review rule requirements in Rule 69?

DISTRICT RESPONSE

There is no relationship. Because there are no offsets that need to be provided under the waiver in Rule 69, there are no associated emission reductions needing to be banked.

15. WORKSHOP COMMENT

Can the five year limitation be removed from the allowable time period for calculating "Actual Emissions" in Rule 26.0(d)(1)(i)(A)? Federal 40 CFR 51.165 does not require a five year limitation. Therefore, a longer period (e.g. 10 years) would seem acceptable to EPA, provided it is representative of normal source operation.

DISTRICT RESPONSE

The District is concerned with extending the actual emissions baseline period beyond five years. First, the only apparent reason a source would want to look back further than five years is if emissions were higher than in the most recent five year period. If the District were to allow a longer look-back, then

credit might be granted for emission reductions that occurred more than five years ago. However, those emission reductions would have already been reflected in the air basin's air quality improvement. Since one purpose of creating emission reduction credits is to provide an air quality benefit, it would make little sense to give credit for emission reductions that have long since taken place and which are already reflected in the air quality trends for the air basin.

Second, the ability of the source to document emission levels, and for the District to verify them, beyond five years back is very questionable. Records of materials usage, VOC contents, fuel specifications, inspection and maintenance, production levels, and other factors necessary to quantify emissions are not typically required to be kept for more than three to five years. Therefore, emissions estimates can become significantly less reliable beyond five years.

Third, the current NSR rules allow only a five year look-back period. This provision, adopted in May, 1994, was a relaxation of the previous NSR provision allowing only a two year look-back period. Further, the five year look-back period is consistent with CAPCOA and ARB recommendations on NSR and banking, and with rules of other California air districts.

Lastly, the District has been consistently advised by EPA Region IX that any look-back period must be limited to five years to meet federal requirements. ARB has also consistently stated that the five year baseline period is consistent with their New Source Review rule guidance and the rules and practices of other air districts.

Therefore, the District is not proposing to change the current five year look-back period.

16. WORKSHOP COMMENT

Rule 26.0 (d)(1)(iii)(A) seems to be saying divide by actual operating time periods and then multiply by actual operating time periods; that is the same as dividing by 1.

DISTRICT RESPONSE

This section is confusing because the first "in days" was added in error. It has been revised to be consistent with similar requirements of the New Source Review rules [Rule 20.1(d)(4)(iii)(A)].

17. WORKSHOP COMMENT

The term "in days" should be deleted from Rule 26.0(d)(1)(iii)(A). Otherwise the calculation to be made is confusing.

DISTRICT RESPONSE

The District agrees. Please see the response to Comment #16. Rule 26.0(d)(1)(iii)(A) has also been clarified to refer to "...actual emissions (in tons) during the actual operating time period..."

18. WORKSHOP COMMENT

Is the last sentence in Rule 26.0(d)(1)(iii)(C) intended to apply only to exempt emission units or to all emission units?

DISTRICT RESPONSE

It is intended to apply only to exempt emission units because exempt equipment typically falls below RACT rule thresholds and therefore would not be RACT adjusted unless such a requirement is included. In addition, state Health and Safety Code §40714.5(b)(1) specifies that a district shall grant emission reduction credits without any discount or reduction in the quantity of the emissions reduced at the source unless otherwise provided by law. It further specifies that emission reduction credits for exempt sources may be reduced only when applied to permitting of other stationary sources as a result of new source review. The wording in the last sentence of Rule 26.0(d)(1)(iii)(C) has been clarified to apply only to emission reduction credits from permit-exempt equipment.

19. WORKSHOP COMMENT

What is EPA's legal authority to require RACT adjustment of emission reduction credits at the time of use?

DISTRICT RESPONSE

The EPA representative present at the workshop explained that Section 172(c)(1) of the federal Clean Air Act requires the application of RACT. Section 173(c)(2) also specifies that emission reductions otherwise required by the Act shall not be creditable as emission reductions for purposes of any offset requirement. Therefore, the District must ensure that emission reductions are surplus to other requirements of the Act, including RACT requirements, when creating ERCs to be used as offsets. In addition, an EPA memo dated August 25, 1994 outlines the requirements for RACT-adjusting emission reduction credits at the time of use. An EPA memo dated July 8, 1996 to Peter Hess of the California Air Pollution Control Officers Association further explains this requirement. These documents are available from the District.

It was noted that most California Air Pollution Control districts do not agree with this EPA requirement that emission reduction credits (from permitted emission units) be RACT-adjusted when they are used as offsets. The District will continue to work with EPA, ARB, and the California Air Pollution Control Officers Association to resolve this issue. The District will do so in the context of the second round of revisions that will need to be made to the District's New Source Review rules to correct remaining deficiencies identified by EPA.

If resolution of this issue requires additional changes to the New Source Review rules, the District will revise the Banking rules at the same time to make them consistent on the issue of RACT-adjustment. See also Comment #65.

20. WORKSHOP COMMENT

How will the District verify that emission reductions from exempt equipment are "Permanent"?

DISTRICT RESPONSE

The burden will be on the banking applicant to demonstrate that the emission reductions are actual emission reductions and to satisfy the requirement that actual emission reductions be permanent. This could be done through purchase records, or other records the applicant may have to document this. In addition, the applicant will need to propose reasonable and approvable methods to ensure the permanence of the reduction. This may be through recordkeeping, inventorying and/or some level of reporting. The agreed upon methods will then be included as conditions on the permits associated with

granting the emission reduction credits or on the emission reduction credits, if necessary. The methods and conditions will likely vary depending on the source of the emission reduction credits and the nature of other exempt and permitted operations at the facility and at other sources.

21. WORKSHOP COMMENT

Rule 26.0(d)(2)(ii) states that 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 District minus the emission unit's maximum permitted emissions after it is modified. Why can't the time period for determining actual emissions be up to the time an application (for Authority to Construct) is deemed complete rather than the time a complete application for Authority to Construct is filed with the District?

DISTRICT RESPONSE

In order for the District to determine a banking application complete, a banking applicant must provide emission calculations showing the actual emission reductions proposed to be banked or provide sufficient information to allow the District to calculate the actual emission reductions. Since a banking applicant can elect to provide this information at any time after a banking application is filed, the applicant has complete control over the time period for determining actual emission reductions. If the applicant would like the time period to be when the banking application is determined to be complete, the applicant can elect to provide the actual emission reduction information as the last item needed to make the application complete. In this case, the time the application is determined to be complete and the time a complete application for Authority to Construct is filed with the District would be the same.

22. WORKSHOP COMMENT

Rule 26.0(e)(5) provides for appeals by an applicant of a District denial of a banking application. What are the appeal rights of the public concerning a District banking action?

DISTRICT RESPONSE

District Rule 25 specifies the procedures for public appeals of District actions. Rule 26.0(e)(5) was not intended to provide any additional rights to banking applicants or the public that are not already provided by Rule 25. The specified 10 day period during which an applicant may appeal a banking application denial has been extended to 30 days consistent with state Health and Safety Code requirements. In addition, since no concerns were expressed at the workshop, the District is proposing to revise Rule 25 to add "Certificate of Emission Reduction Credit" to the list of District actions that an aggrieved person may be appeal to the Hearing Board.

23. WORKSHOP COMMENT

Why must an emission reduction have occurred not more than five years before the date a banking application was filed with the District [Rule 26.1(a)(2)]? If a five year period does not represent normal operations, what opportunity is allowed for reductions to be considered outside a five year period?

DISTRICT RESPONSE

Please see the response to Comment #15.

24. WORKSHOP COMMENT

Rule 26.1(a)(4) specifies that the District may render an emission reduction credit and any subsequent use invalid if any permit or emission reduction credit condition related to the emission reduction credit and imposed as a requirement for issuing the emission reduction credit is not complied with. In such event, what options (e.g., a variance) are available to the user of an emission reduction credit?

DISTRICT RESPONSE

If an emission reduction credit is rendered invalid because a permit or emission reduction credit condition related to the emission reduction credit is not complied with, the user of the emission reduction credit can petition the Air Pollution Control District Hearing Board for a variance from the emission offset requirement for which the emission reduction credit was provided or can provide other emission reduction credits of a like amount. It should be noted that the Hearing Board can only grant a variance for a limited period of time and the federal Environmental Protection Agency does not recognize variances granted by local Hearing Boards. The user will need to secure additional emission reduction credits to compensate for those deemed invalid. Please see also the response to Comment #63.

25. WORKSHOP COMMENT

If the user of an emission reduction credit finds that additional credits are needed, for example because control equipment is not as efficient as expected, will the credits be confiscated by the District?

DISTRICT RESPONSE

The District would require the user (permit applicant) to provide additional emission reduction credits in the amount of the shortfall. The District will not confiscate the emission reduction credits.

26. WORKSHOP COMMENT

What happens to company A if it buys and uses ERCs from company B which it created, for example, by restricting its solvent usage and company B later decides it wants to increase its solvent usage back up to previous levels?

DISTRICT RESPONSE

Currently, the permit issued to company A will likely contain a condition specifying that it is valid as long as company B restricts its solvent usage in accordance with what was specified when the emission reduction credit was granted. If company B decides it will no longer abide by the conditions creating the emission reduction credit, the emission reduction credit will likely become invalid and company A will be required to obtain other offsets in a like amount or cease operations. To guard against such situations, the contract transferring the emission reduction credit from company B to company A will need to be very carefully worded by company A such that if action by company B invalidates the emission reduction credit being used by company A, company B is liable.

However, in response to this question and Comment #63, the District has revised Rule 26.1(d) to specify that if the District needs to ensure the validity of any emission reduction credit, it shall do so by first imposing conditions on any permit associated with creating the emission reduction credit. These permit conditions shall remain valid for the life of the emission reduction credit, except as specified, regardless of whether the emission reduction credit is subsequently sold. If the validity of the emission reduction credit cannot be ensured by conditions on a permit, the District may then add conditions to the

emission reduction credit to ensure its validity. The emission reduction credit owner would then be responsible for compliance with such emission reduction credit conditions. Please see also the response to Comment #63.

27. WORKSHOP COMMENT

The District should check whether "and" or "or" should link Rule 26.1(b)(1), (2) and (3). Should it be (1), and (2) or (3)?

DISTRICT RESPONSE

Rule 26.1 has been revised to clarify that a reduction will be classified as a Class A emission reduction credit if (1) it meets the requirements of Rule 26.1(a), (2) the reduction is an actual emission reduction, and (3) the reduction is the result of a modification to, or limitation on use of, an existing emission unit or is the result of a shutdown and there will likely be no resulting emission increase by a replacement unit. The language in Subsection (b)(1) will be combined with the last sentence. Subsections (b)(2) and (b)(3) will become (b)(1) and (b)(2) and will be linked by "or."

28. WORKSHOP COMMENT

How is Rule 26.1(b)(3) implemented with respect to replacement emission units if a major source out-sources work to other in-county businesses? Will these other in-County businesses have to provide offsets to accommodate this new work?

DISTRICT RESPONSE

In general, if a major source out-sources work to another in-county business, Rule 26.1(b)(3) would prevent the District from allowing the emission reductions from the shutdown source to be banked, regardless of whether or not the business to which the work was out-sourced provided offsets.

29. WORKSHOP COMMENT

In what other rules does the term "Replacement Unit" appear? What is the relationship between offsets for the other rules that have provisions for replacement units? What is the District's process for determining the acceptable and creditable reduction granted to a replacement unit?

DISTRICT RESPONSE

The term replacement unit (or similar terminology) is used in the District's New Source Review (NSR) rules, Rule 69, Rule 11 and may be used in other District regulatory requirements such as a NSPS, NESHAP, or ATCM. The NSR rules provide criteria for calculating any emission increase associated with a replacement emission unit [Rule 20.1(d)(3)(iv)], emission reductions [Rule 20.1(d)(4)(i)(C) and (d)(4)(i)(D)], and emission offsets for any emission increases [Rules 20.2(d)(5)(iv) and 20.3(d)(5)(iv)]. For purposes of NSR, Rule 20.1(c)(57) defines a replacement emission unit.

Only the District's NSR rules and Rule 69 contain provisions for both offsets and replacement units.

The procedure for determining the creditable emission reduction for a replacement emission unit is similar to that for other emission reductions for which credits are granted. The key question that must be addressed is whether or not there will be an actual emission reduction (i.e. will it be real, permanent,

surplus, quantifiable and enforceable)? It should be noted that the District interprets a replacement emission unit to be one which physically replaces an existing emission unit, where the existing emission unit is shutdown and often removed. The replacement unit is owned or operated by the same person who owns or operates the existing emission unit being replaced. A new emission unit owned or operated by company A which competes with an existing emission unit owned or operated by company B to provide a product or service will not be considered a replacement emission unit.

Other District rules and state and federal requirements may also apply to replacement emission units.

30. WORKSHOP COMMENT

What good are Class B ERCs if they cannot be used as offsets?

DISTRICT RESPONSE

Class B emission reduction credits have no value other than they preserve emission reductions which do not qualify as Class A emission reduction credits for a specified reason. If this specified reason is no longer valid, Class B emission reduction credits may then be reclassified as Class A emission reduction credits.

31. WORKSHOP COMMENT

The same comment applies to Rule 26.4(a) as was made earlier regarding EPA's requirement to RACT adjust emission reductions at their time of use as emission offsets.

DISTRICT RESPONSE

Please see the response to Comment #19.

32. WORKSHOP COMMENT

Is there a fee for the District advisory opinion referenced in Rule 26.5(e)?

DISTRICT RESPONSE

A fee will be charged based on the amount of time actually expended by the District engineer providing the advisory opinion and the applicable labor rate in Rule 40.

33. WORKSHOP COMMENT

Rule 26.6(a)(3) refers to granting credits associated with Permits to Operate. Can "inactive status" permit units also qualify for banking opportunities?

DISTRICT RESPONSE

Emission units in "inactive status" are eligible to create banked emission reduction credits. Credits for such permits will be determined in the same manner as they are for emission units having active Permits to Operate. Emission calculations will consider periods when there were no emissions, if those periods fall within the baseline period for determining actual emissions.

34. WORKSHOP COMMENT

Rule 26.6(a)(3) refers to granting credits associated with Permits to Operate. If equipment is in inactive status, a period representing normal representative operations may be outside the five year window. Flexibility should be given for extending the five year window.

DISTRICT RESPONSE

The District disagrees. If an emission unit is in "inactive status" it will be reviewed for creditable emission reductions as would any other stationary source. Emission calculations will consider periods when there were no emissions if those periods fall within the baseline period for determining actual emissions. To ensure that the emission banking/offset program results in air quality benefits, emission reductions that occurred more than five years prior to filing a banking application will not be creditable. Please see also the response to Comment #15.

35. WORKSHOP COMMENT

What does "Reserved" mean in Rule 26.6(b)(1)?

DISTRICT RESPONSE

"Reserved" simply means the requirements previously in this section have been deleted and no additional requirements have been added; the space has been "reserved" for any future requirements. However, this "reserved" space has been deleted.

36. WORKSHOP COMMENT

Some percentage (e.g. 50%) of the emission reductions in the District bank allowed in Rule 26.6 should be set aside for the public good and not allowed to be used to offset emission increases from new and modified projects. The District should consider specifying what this percentage should be.

DISTRICT RESPONSE

Federal major sources that are required to provide emission offsets for emission increases are required to do so at the emission offset ratio of 1.2 to 1.0 as specified in the District's New Source Review rules. This provides a net air quality benefit to the public. Since the District has no experience with placing emission reductions in the District bank and is therefore unsure what quantity of reductions may be available for inclusion in the bank, it is reluctant to consider any further discounting of these reductions. In addition, the District presumes that, other than federal offsets needed for District-required control equipment and to demonstrate Reasonable Further Progress, all offsets will be used for purposes approved by the Air Pollution Control Board. Because the Board represents the citizens of San Diego county, the Board's selection of District offset uses will be for the public good. Finally, it should be noted that creditable emission reductions must be surplus. In other words, they must already go beyond the emission reductions required under District, state or federal emission control requirements, including the stringent requirements for Best Available Control Technology for new and modified emission sources. In that sense, the majority of emission reductions have already been taken for the public good.

37. WORKSHOP COMMENT

Will there be a Phase II to the Banking Rule changes? For example, will there be revisions allowing emission reductions from indirect sources to be banked?

DISTRICT RESPONSE

The District anticipates there will be a second phase of changes to the Banking rules, including companion changes to Phase II of the New Source Review rules, changes necessary to correct EPA-identified deficiencies, changes to address the new requirements associated with AB1777, possible changes to address RACT adjustment, and changes to address other issues. The District expects this second phase of Banking rule changes will commence by the end of 1997. The District does not expect the changes to these Banking rules to allow emission reductions from indirect sources to be banked. Please see also the response to Comment #1.

38. WORKSHOP COMMENT

Will permit and emissions reduction credit conditions be part of Title V/Synthetic Minor Source permits? If so, will they be considered federally enforceable, and legally and practically enforceable? How will emission reduction credits be included in a facility's "emissions-based" and "emissions-related" operations (e.g. aggregate actual emissions)? Will public notice and other administrative or fee-based activities be required for the processing of these conditions under the auspices of Title V or Synthetic Minor Source (Rule 60.2)?

DISTRICT RESPONSE

Title V and Synthetic Minor Source permits will contain many terms and conditions. If a source has reduced its actual or potential emissions in order to avoid or limit a requirement, the permit(s) will likely contain conditions reflecting an emission limit and the means for enforcing it. Such emission reductions are not surplus and are not creditable. However, if a Title V or synthetic minor source has reduced actual emissions beyond what is needed to meet District, state and federal requirements, it can apply for and receive emission reduction credits, assuming all other banking criteria are met.

Terms and conditions necessary to ensure emission reduction credits are real, permanent, and enforceable would be incorporated into the source's District permits and possibly the emission reduction credit certificate. The conditions would be considered federally enforceable since the credits could be used as offsets to meet federal NSR requirements. The credits would not be aggregated with the source's emissions for purposes of Title V or synthetic minor source permit status since they represent actual emission reductions that are enforceable.

The District will recover its costs for evaluating and granting emission reduction credits, and developing permit and emission reduction credit certificate conditions to enforce the emission reductions as it would for any other banking application request. Similarly, all proposed approvals of banking applications will be noticed for a 30-day public comment period [Rule 26.0(e)(8)]. This provides an opportunity to comment on related permit or emission reduction credit conditions.

39. WORKSHOP COMMENT

The District should take a more aggressive approach in adding eligible emission reductions to the District Bank that have not been otherwise banked. The District should bank such reductions as soon as possible after they occur. If an eligible person takes an action such that the District-banked ERCs would be invalid, the District should cancel them or cancel an equivalent ERC. The District should also make consistent the allowable uses of District-banked ERCs specified in the Banking rules and the New Source Review rules.

DISTRICT RESPONSE

The District agrees and has revised Rule 26.6(a)(3) to allow the District to bank such an unclaimed emission reduction resulting from the cancellation, retirement or expiration of a Permit to Operate. Provisions have been added requiring the District to cancel the resulting ERC if the permit holder renews the expired or retired Permit to Operate within 180 days from the date the Permit to Operate expired or was retired, or if the permit holder files an application to bank the reductions within two years of the date the Permit to Operate was canceled, expired or was retired and the District determines Class A ERCs should be granted. The Banking rules have also been revised to be consistent with the New Source Review rules concerning allowable uses of District-banked emission reduction credits.

40. WORKSHOP COMMENT

The District is required to use BARCT, as defined in Health and Safety Code §40406, on all existing permitted stationary sources. Rule 26.0(d)(1)(iii) needs to be revised to ensure all ERCs are adjusted to reflect BARCT (i.e. are surplus to BARCT).

DISTRICT RESPONSE

The District agrees that existing permitted stationary sources are required to use BARCT and that emissions reductions must be adjusted to reflect BARCT before they can be banked. However, since emission reductions must be "actual emission reductions" and therefore must be "surplus" before they can be banked, they must also be in excess of any stationary source emission reduction measure contained in California Clean Air Act requirements [see Rule 26.0(c)(23)(iv)]. Since BARCT is clearly a California Clean Air Act requirement, the emission reduction must be BARCT adjusted before it can be banked. This is a standard District requirement before Class A ERCs are granted. Similarly, emission reductions not previously banked must be BARCT adjusted before they can be used as emission off-sets pursuant to the New Source Review rules.

41. WORKSHOP COMMENT

Rule 26.6(a)(5) specifies that the recipient of District Bank ERCs must return them to the District bank in the event they are no longer needed. Any ERCs returned to the District bank should then be reevaluated to ensure they are still real, surplus, quantifiable, surplus and enforceable. Returned ERCs should be recalculated based on existing requirements of Health and Safety Code §40709.5(c).

DISTRICT RESPONSE

The District disagrees. Banked emission reduction credits that are not associated with the District Bank and that are no longer needed are not required to be reevaluated to ensure they are still real, surplus, quantifiable, surplus and enforceable. The District does not believe it is required or appropriate to reevaluate emission reduction credits no longer needed that are returned to the District Bank.

WRITTEN COMMENTS

42. WRITTEN COMMENT

Rule 26.0(d)(1)(iii)(C) - The issue of RACT adjustment at the time of use of emission reduction credits (ERCs) is a very controversial one. Indeed, the EPA and the Air Resources Board are in disagreement with respect to this issue. RACT adjustment at the time of use is not legally justified nor required by any Clean Air Act provision nor EPA policy. The District is strongly urged not to make the proposed change (i.e., requiring that emission reductions from non-permitted sources be RACT adjusted at the time of use) until all the parties have come to an agreement on this issue. The concern is not only with respect to the questionable legality of requiring RACT adjustment at the time of use, but also the setting of a precedent in San Diego County, the logical progression of which would be the RACT adjustment at the time of use for all emission reduction credits. Given EPA's interpretation of the timing of the RACT adjustment, there is no known reason why RACT adjustment at the time of use would be limited only to non-permitted equipment. Acquiescing to RACT adjustment at the time of use for non-permitted emissions would provide added strength to the argument that it should be done for all ERCs. Any movement which would have that result is strongly opposed. The offsetting provisions of other states have also been reviewed. None of the regulations reviewed require RACT adjustment at the time of use. This is another example where California is treated to a more stringent standard by EPA than are other states. The District is strongly urged not to make the changes.

DISTRICT RESPONSE

Please see the response to Comment #19.

43. WRITTEN COMMENT

The following change should be made to the last sentence of Rule 26.0(e)(2): "... explanation of the preliminary decision."

DISTRICT RESPONSE

The District agrees and has revised the last sentence as suggested.

44. WRITTEN COMMENT

The language in Rule 26.7(a)(1) is a bit confusing. Specifically, the wording "...or product manufacture as that emission unit ..." Presumably the intent is to ensure that if units are shutdown, another unit does not manufacture the same product. If so, the following changes are suggested:

"(1) The person demonstrates to the satisfaction of the Air Pollution Control Officer that operation of such previously shutdown emission unit is not for the primary purpose of replacing the same function or product-manufacture manufacturing the same product as that emission unit did before it was shutdown; or"

DISTRICT RESPONSE

The District agrees and has revised Rule 26.7(a)(1) as suggested.

45. WRITTEN COMMENT

The District should consider including a provision allowing interbasin trading between San Diego and SCAQMD as part of the Banking rules, consistent with AB2525.

DISTRICT RESPONSE

The District has discussed including the suggested provision with the EPA. EPA has advised that it would approve such a provision provided that emission offsets from the South Coast AQMD were provided at ratios acceptable to the EPA to account for the distance between the offset in the South Coast AQMD and the new or modified source in San Diego county. The District has been discussing appropriate offset ratios with EPA Region IX's technical staff for over a year. Resolution of offset ratios acceptable to EPA may require additional photochemical modeling. When this issue is resolved with the EPA, the District will propose revising the New Source Review rules to allow emission reductions in the South Coast AQMD to be used as offsets in San Diego county in accordance with state and federal requirements. The District does not believe the Banking rules will need to be revised.

46. WRITTEN COMMENT

The District should consider including a provision allowing interbasin trading between San Diego and Tijuana as part of the banking rules.

DISTRICT RESPONSE

This comment presumes that emission reductions in Tijuana would provide air quality benefit in San Diego county. The prevailing meteorology is such that there would be little benefit to San Diego county if emission reductions in Tijuana were used as offsets for new and modified projects in San Diego county. In addition, the District would seriously question whether emission reductions in Tijuana could satisfy the criteria for "Actual Emission Reductions" specified in Rule 26.0(c)(2), particularly concerning the enforceability of such emission reductions in Tijuana. Lastly, the District discussed this suggestion with EPA's Region IX staff and was advised that EPA would not approve such emission reductions as satisfying federal emission offset requirements.

47. WRITTEN COMMENT

The District should allow ERC certificates referenced in Rule 26.0(c)(5) [now Rule 26.0(c)(6)] to be issued by other agencies.

DISTRICT RESPONSE

The District disagrees. Since emission reduction credits may be used only to meet District requirements, the District must ensure emission reductions satisfy all applicable requirements (i.e. state and federal) before they are approved as emission reduction credits. The District will not delegate this responsibility to another agency.

48. WRITTEN COMMENT

The District should allow the ERC registering referenced in Rule 26.0(c)(9) [now Rule 26.0(c)(10)] to be done by other agencies.

DISTRICT RESPONSE

The District disagrees. Since ERCs may be used only to meet District requirements, the District must ensure emission reductions satisfy all applicable requirements (i.e. state and federal) before they are approved and registered as ERCs. The District will not delegate this responsibility to another agency.

49. WRITTEN COMMENT

The District should allow the tracking system referenced in Rule 26.0(c)(10) [now Rule 26.0(c)(11)] to be maintained by other agencies.

DISTRICT RESPONSE

The District disagrees. Since emission reduction credits may be used only to meet District requirements, the District must ensure emission reductions satisfy all applicable requirements (i.e. state and federal) before they are approved and registered as emission reduction credits. The District registry is a mechanism to keep track of emission reduction credits. Proper tracking of emission reduction credits is essential to the operation of the banking program. The District will not delegate the responsibility for tracking emission reduction credits to another agency.

50. WRITTEN COMMENT

Rule 26.0(c)(12) [now Rule 26.0(c)(14)] should be expanded to allow cross-border ERCs.

DISTRICT RESPONSE

Please see the response to Comment #46.

51. WRITTEN COMMENT

Rule 26.0(c)(14) [now Rule 26.0(c)(15)] should be revised to allow cross-border ERCs.

DISTRICT RESPONSE

Please see the response to Comment #46.

52. WRITTEN COMMENT

The definition of "Quantifiable" in Rule 26.0(c)(15) [now Rule 26.0(c)(16)] should be revised to allow other agencies to determine if an emission reduction is quantifiable.

DISTRICT RESPONSE

The District disagrees. Since ERCs may be used only to meet District requirements, the District must ensure emission reductions satisfy all applicable requirements (i.e. state and federal) before they are approved and registered as ERCs. This includes ensuring the emission reductions are quantifiable. The District will not delegate this responsibility to another agency.

53. WRITTEN COMMENT

The definition of "Real" in Rule 26.0(c)(16) [now Rule 26.0(c)(17)] should be expanded to allow emission reductions outside of San Diego county to qualify as ERCs.

DISTRICT RESPONSE

Please see the response to Comments #45 and #46.

54. WRITTEN COMMENT

Rules 26.0(c)(18) [now Rule 26.0(c)(19)], 26.0(c)(21) [now Rule 26.0(c)(22)], and 26.0(c)(22) [now Rule 26.0(c)(23)] should be revised to allow cross-border ERCs. They should be revised to incorporate reference to attainment plans of the SCAQMD and control measures that may be part of attainment strategies in Mexico (or a surrogate for a RAQS in Mexico).

DISTRICT RESPONSE

Please see the response to Comments #45 and #46.

55. WRITTEN COMMENT

Rule 26.0(c)(23) [now Rule 26.0(c)(24)] should be revised to provide for a verification process acceptable to District and Mexico for cross-border ERCs.

DISTRICT RESPONSE

Please see the response to Comment #46.

56. WRITTEN COMMENT

Rule 26.0(e) should be revised to allow other agencies to process applications for ERCs.

DISTRICT RESPONSE

Please see the response to Comment #47.

57. WRITTEN COMMENT

Provisions should be added to Rule 26.0(e) to allow for public comments and appeals.

DISTRICT RESPONSE

Please see the response to Comment #22.

58. WRITTEN COMMENT

Rule 26.1 should be revised to allow other agencies to issue and validate ERCs.

DISTRICT RESPONSE

Please see the response to Comment #47.

59. WRITTEN COMMENT

Rule 26.5 should be revised to allow other agencies to transfer and verify ERCs.

DISTRICT RESPONSE

The District disagrees. Since emission reduction credits may be used only to meet District requirements, the District must ensure emission reductions satisfy all applicable requirements (i.e. state and federal) before they are approved (verified) as emission reduction credits. The District must also be certain that approved emission reduction credits are appropriately transferred to another party for subsequent use as offsets. The District will not delegate this responsibility to another agency.

60. WRITTEN COMMENT

The definition of "Surplus" is in conflict with state and federal law and local Rule 1200, and will allow for a greater pool of offsets for toxic substances. It will allow emission reductions of toxic substances to be banked even if they are required by state and federal air toxics regulations. Section 173(c) of the federal Clean Air Act provides that "Emissions reductions otherwise required by this chapter shall not be creditable as emissions reductions for purposes of any ... offset requirement." The phrase "this chapter" refers to Chapter 85 of Title 42 of the United States Code, which encompasses the entire Clean Air Act. Thus reductions under any requirement of the Clean Air Act, including MACT requirements, are ineligible to be banked. Similarly, section 40709 of the California Health and Safety Code provides that any district banking system "shall provide that only those reductions in the emission of air contaminants which are not otherwise required by any federal, state or district law, rule, order, permit or regulation shall be registered ...". Thus, in addition to federal toxics requirements, any reductions made under any state program, such as AB2588, or local program, such as toxics NSR, are likewise ineligible for banking. The definition is also in conflict with the definition of surplus contained in Rule 1200, which expressly provides that reductions made pursuant to MACT or ATCM standards are not surplus. This definition would also create a greater pool of toxics available for use as offsets. The District should be seeking the greatest reductions possible of emissions of air toxics and limiting, especially in already impacted neighborhoods, the potential for new sources of toxic air contaminants to locate in San Diego. By artificially inflating the availability of VOC or particulate matter offsets, the District is instead enabling an already existing problem to get worse.

DISTRICT RESPONSE

Please see the response to Comment #8.

61. WRITTEN COMMENT

Rule 26.0(e)(5) provides an affected industry the right to appeal the denial of a banking application. However, the public is not afforded the same right-to-appeal a decision allowing reductions to be banked. At the April 18, 1997 workshop on this rule, it was indicated that the public appeal process could proceed under Rule 25. However, Rule 25 does not allow an "aggrieved person" (i.e. the public) to appeal a decision on a Certificate of Emission Reduction Credit. Rather, appeal for the public is limited to "decision[s] or action[s] pertaining to the issuance of an Authority to Construct, Permit to Operate, temporary authorization, Permit to Sell or Rent, or renewal of a Permit to Operate with new or modified conditions..." Members of the public should be given the same rights to appeal as the industry applicants.

DISTRICT RESPONSE

Please see the response to Comment #22.

62. WRITTEN COMMENT

A portion, if not all, of the District's ERCs should be used to further safeguard the public health and welfare. As more is learned about the deleterious health impacts of air pollution, air quality standards are often made more strict, as is currently being done by the federal government. It is suggested that either upon entry or removal from the District bank, 50% of the District ERCs be forever removed from circulation and "given" to the people of San Diego County.

DISTRICT RESPONSE

Please see the response to Comment #36.

63. WRITTEN COMMENT

Currently, the District adds conditions to permits and ERCs to ensure the validity of the ERC. If the person creating the ERC sells the ERC to a second party, the second party then becomes responsible for complying with the ERC conditions and, therefore, for ensuring that the person who created and sold the ERC complies with the permit conditions that were deemed necessary to create the ERC. If the person creating the ERC violates the associated permit conditions, the second party is also in violation. This is unfair and should be corrected. The District should strengthen and revise Rule 26.1(d) to require the person creating the ERC to comply with the permit conditions deemed necessary to ensure the validity of the ERC and only allow such conditions to be removed if an equivalent amount of ERC is canceled. This will give the District the degree of comfort it needs to no longer hold the second party, who bought the ERC in good faith, responsible for ensuring that the person who created the ERC and subsequently sold it complies with the permit conditions necessary to ensure the validity of the ERC.

DISTRICT RESPONSE

The District agrees and has revised Rule 26.1(d) to specify that if the District needs to ensure the validity of any emission reduction credit, it shall do so by first imposing conditions on any permit associated with creating the emission reduction credit. These permit conditions shall remain valid for the life of the emission reduction credit, except as specified, regardless of whether the emission reduction credit is subsequently sold. If the validity of the emission reduction credit cannot be ensured by conditions on a permit, the District may then add conditions to the emission reduction credit to ensure

its validity. The emission reduction credit owner would then be responsible for compliance with such emission reduction credit conditions. It is noted that if there abuses as a result of this change, the District will recommend that Rule 26.1(d) be revised to again require conditions on an emission reduction credit specifying that the emission reduction credit owner is also responsible to ensure that the person who created the emission reduction credit complies with the permit conditions that were added to ensure the validity of the emission reduction credit. This would likely be done through a contractual agreement between the two parties.

64. EPA WRITTEN COMMENT

The District has added a new paragraph to the definition of "Surplus" which allows ERCs of toxic air contaminants that are also VOCs or PM-10 and are required solely by a District, state or federal law, rule or regulation to be considered surplus. This paragraph is in direct conflict with Paragraph (ii) of the definition that states surplus is in excess of "any standard or other requirement under Sections 111 or 112 of the federal Clean Air Act." The Clean Air Act at 173(c)(2) requires "[e]missions reductions otherwise required by this chapter shall not be creditable as emission reductions for purposes of any such offset requirement." For example, if a MACT standard requires 95% reduction, of a listed hazardous air pollutant (under 112(b)) and that HAP is also a VOC, federal law would not consider 95% VOC reductions creditable for offset purposes. EPA recommends deleting the last paragraph entirely because items (i) through (iv) provide the necessary safeguards to assure reductions are surplus.

DISTRICT RESPONSE

The District has decided to withdraw this proposal. Please also see the response to Comment #8.

65. EPA WRITTEN COMMENT

The rule states that ERCs, once banked, will not be reduced, eliminated or otherwise affected by subsequent regulation. The Clean Air Act requires, as stated, in the preceding paragraph, that new or modified sources offset increases in air emissions by obtaining surplus emission reductions. Because the application of RACT is required in Section 172(c)(1) and is independent of any RFP, ROP or attainment demonstration, the District must ensure that all applicable adjustments necessary to ensure that credits are surplus, including RACT requirements, are accounted for when particular ERCs are used. EPA documents "Response to Request for Guidance on Use of Pre-1990 ERCs and Adjusting for RACT at Time of Use" dated August 26, 1994 and a John Seitz letter to Peter F. Hess dated July 8, 1996 help explain EPA's position on RACT adjusting at the time of use.

DISTRICT RESPONSE

Please see the response to Comment #19. As noted in this response, the District will continue to work with EPA, ARB, and the California Air Pollution Control Officers Association to resolve this issue. The District will do so in the context of Phase II of District's New Source Review rule revisions needed to correct remaining deficiencies. In the event resolution of this issue requires additional changes to the New Source Review rules, the District will revise the Banking rules at the same time to make them consistent on the issue of RACT-adjustment.