



**Air Pollution Control Board**  
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**Air Pollution Control District**  
R. J. Sommerville Director

## WORKSHOP NOTICE

### FOR DISCUSSION OF PROPOSED REPEAL OF EXISTING RULES 26.0 - 26.10 (BANKING) AND ADDITION OF NEW RULES 26.0 - 26.10

The San Diego County Air Pollution Control District will hold a public meeting to consider repealing existing Rules 26.0 - 26.10 (Banking Rules) in its entirety and adding proposed new Rules 26.0 - 26.10. Comments concerning this proposal may be submitted in writing before, or made at the workshop which is scheduled as follows:

DATE: April 18, 1997 - Friday  
TIME: 1:00 to 2:30 p.m.  
PLACE: Air Pollution Control District  
Conference Room 139  
9150 Chesapeake Dr.  
San Diego CA

Businesses have advised that District Banking Rules were not working well and were acutally discouraging businesses from banking emission reductions. Since emission reduction credits are needed to meet state and federal offset requirements, it was agreed this problem needed to be resolved. A work group was formed to identify issues and propose changes. As a result, the District is proposing to repeal the existing rules in their entirety and adding new rules that have been restructured and retitled to be more user friendly and more descriptive of what is included in each rule. They preserve the concept of Class A and Class B Emission Reduction Credits (ERCs) and are consistent with federal emission offset requirements. Specifically, the new rules accomplish the following:

**RULE 26.0** now more closely parallels the format of the New Source Review rules. ERCs are no longer restricted to use only as emission offsets. 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 ERC enforceability. Provisions have been added requiring the District to maintain a list of State Implementation Plan and Regional Air Quality Strategy measures for which ERCs may not be issued. A requirement has been added that the District include banked ERCs in its emissions inventory so they are considered for air quality planning purposes. Language has also been added to specify that previously banked ERCs will not change as a result of these proposed amendments.

In general, the Definitions which have been added are consistent with the New Source Review rules. Additional definitions have been added as necessary. The definition of "Surplus" contains a unique feature allowing emission reductions of toxic air contaminants that are also VOCs or particulate matter and which are required solely by a District, state or federal law, rule or regulation be considered surplus for purposes of creating VOC or particulate matter ERCs.

An Emission Reductions Calculations section has been added paralleling the emissions calculations specified in the New Source Review rules. Class A ERCs 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 in which a banking application must be processed. Also, the requirement in the existing rules has been deleted that equipment creating an ERC must have a valid Permit to Operate.

**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 also be actual emission reductions to be classified as Class A ERCs.

**RULE 26.2** is retitled Use of Emission Reduction Credits and specifies that only Class A ERCs can be used as emission offsets. ERCs are now also eligible for meeting state Best Available Retrofit Control Technology emission reduction requirements.

**RULE 26.3** is retitled Reclassification of Emission Reduction Credits and contains the requirements necessary to reclassify Class B ERCs to Class A.

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

**RULE 26.5** is retitled Transfer of Emission Reduction Credits and deals primarily with the legalities associated with transferring ERCs from one party to another. It also describes the information to be provided when an ERC transfer is made and how new ERCs are issued. It includes a warning to potential ERC buyers to beware of any changes in state or federal requirements that might affect the ERCs, and allows the District to advise potential buyers of ERCs of changes that would put the use of such ERCs at risk. It includes a reference to state law concerning the enforcement of ERC transfers with third parties under various circumstances.

**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 ERCs related to expired permits if the permit holder does not do so within the prescribed time frame. It also specifies allowable uses of District-banked ERCs.

**RULE 26.7** is retitled Shutdown and Related Emission Units and specifies that equipment that was shutdown and an ERC 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. An exception is if emission offsets have been provided or the ERC canceled. Language has also been added specifying that equipment cannot be operated if it is primarily for the purpose of replacing the same function or product manufacture as equipment that was shutdown and ERC created. There also must be a direct relationship to the equipment that was shutdown and ERC created. An exception is if emission offsets have been provided or the ERC canceled.

**RULE 26.8** is retitled Banking of Limited Emission Reductions. It allows emission reductions resulting from implementing State Implementation Plan (SIP) or Regional Air Quality Strategies (RAQS) control measures to be banked as Class A ERCs if they are implemented two years or more before they are required by the measure. They will expire on the date they are actually required by the control measure. Language also specifies that a person using ERCs of limited duration cannot apply for a variance to extend the term of the ERC beyond the specified date. Persons would have to agree to this before applying for an ERC of limited duration.

**RULE 26.9** is retitled Banking Certificates and the Emission Reduction Credit Register. It requires the District to issue certificates for approved ERCs and record them in an ERC register.

**RULE 26.10** is retitled Banking for BRAC Military Base Closure or Realignment Actions. It 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.

If you would like a copy of the proposed amendments, please call Juanita Ogata at (619) 694-8851. If you have any questions concerning the proposal, please call me at (619) 694 3303.



RICHARD J. SMITH  
Deputy Director

RJS:jo  
03/05/97

## **AIR POLLUTION CONTROL DISTRICT**

### **PROPOSED REPEALING OF EXISTING RULES 26.0 - 26.10 and ADDING NEW RULES 26.0 - 26.10 (BANKING RULES)**

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

#### **RULE 26.0. BANKING, GENERAL REQUIREMENTS**

##### **(a) APPLICABILITY**

This rule applies 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 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) Banking application fees, banked emission transfer application fees, reclassification application transfer fees and fees for 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, 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) "**Certificate**" means a District-issued document regarding an ERC and containing the information specified in Rule 26.9(a).

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

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

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

(9) "**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.

(10) "**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).

(11) "**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.

(12) "**Federally Enforceable**" means capable of being enforced by the federal Environmental Protection Agency (EPA) including through the SIP or through terms and conditions on 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 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.

(13) "**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.).

(14) "**Permanent**" means federally enforceable and existing for an unlimited period of time.

(15) "**Quantifiable**" means that a reliable basis for calculating the amount, rate, nature and characteristics of an emission reduction can be established, as determined by the Air Pollution Control Officer.

(16) "**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.

(17) "**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.

(18) "**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.

(19) "**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.

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

(21) "**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 U.S. Environmental Protection Agency.

(22) "**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; or

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

(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; or

(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; or

(v) any stationary source emission reduction measure noticed for workshop by the District. Such emission reductions shall be considered surplus until they are required by a District Rule or Regulation. 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; or

(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; or

(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; or

(viii) emission reductions which have been banked or otherwise committed for air quality purposes.

Emission reductions of toxic air contaminants (as defined in Rule 1200) that are also volatile organic compounds or particulate matter and which are required solely by a District, state or federal law, rule or regulation requiring emission reductions of such toxic air contaminants shall be considered surplus for purposes of creating volatile organic compound or particulate matter ERCs, as applicable.

(23) "**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) over the actual operating time period in days 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 emission reduction credits 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 emission reduction credit requiring such discounting to occur at the time of use of the emission reduction credit.

(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, 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 A BANKING APPLICATION**

**(1) Determination of a Complete Application**

(i) An ERC banking application shall be deemed complete when the Air Pollution Control Officer determines sufficient information has been provided to evaluate the ERC 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 ERC 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 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 District 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 a banking 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 10 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.

## **RULE 26.1. STANDARDS FOR GRANTING EMISSION REDUCTION CREDITS**

### **(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 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. The Air Pollution Control Officer may render the ERC and any subsequent use invalid if any permit or ERC condition related to the ERC and imposed as a requirement for issuing the ERC is not complied with.
- (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 emission reduction credits. 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 and:

- (1) The emission reductions are actual emission reductions.
- (2) 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
- (3) 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 ERC or permit deemed necessary to ensure the validity of the ERC. Any permit or ERC condition imposed as a requirement for issuing an ERC may not be removed unless the ERC or another equivalent ERC is canceled, or unless the Air Pollution Control Officer determines that the condition is no longer necessary to ensure the validity of the ERC.

**RULE 26.2. USE OF EMISSION REDUCTION CREDITS**

Only Class A ERCs shall be eligible for use as emission offsets pursuant to District Rules and Regulations or for any other use allowed by District Rules and Regulations or state law. Class B ERCs are ineligible for any use unless reclassified to Class A ERCs.

### **RULE 26.3. RECLASSIFICATION OF CLASS B EMISSION REDUCTION CREDITS**

#### **(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.

### **RULE 26.4. PERMANENCY OF BANKED EMISSION REDUCTION CREDITS**

#### **(a) PERMANENCY OF EMISSION REDUCTION CREDITS; GENERAL**

Except as specified in Rules 26.1(a)(4) 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 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.

**RULE 26.5. TRANSFER OF EMISSION REDUCTION CREDITS**

**(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.

**RULE 26.6. DISTRICT BANKING OF EMISSION REDUCTION CREDITS**

**(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 shall not bank emission reductions resulting from the expiration or retirement of a Permit to Operate because of the failure of a permit holder to renew the Permit to Operate until a period of 180 days or more has passed from the date the Permit to Operate expired or was retired. Upon written request of the permit holder, the District shall extend the period an additional 90 days. The District's right to bank such reductions shall be terminated by the owner filing an application to bank the reductions within one year of the date the Permit to Operate 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 if the resulting banked ERCs have been used as emission offsets for an emission unit. The 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 District-owned ERCs may be used for any of the following:

(1) RESERVED.

(2) As offsets for emission increases caused by air contaminant control equipment installed to comply with a requirement of these rules and regulations or state or federal, order or requirement. The control equipment owner or operator must demonstrate that such ERCs also comply with the requirements of federal law before they may be used as offsets for projects subject to federal offset requirements.

(3) At the discretion of the Air Pollution Control Officer to demonstrate Reasonable Further Progress.

(4) 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 shall reimburse the District for its costs in creating and processing the ERCs, as determined by the District, unless the Air Pollution Control Board directs such reimbursement shall be waived.

**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 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 product manufacture as that emission unit before it was shutdown; or

(2) 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 product manufacture 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 function or product manufacture previously accomplished by the shutdown emission unit, unless:

(1) all requirements of these rules and regulations have been met; and

(2) 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 pur-

suant to this Section do not qualify as emission reductions or emission offsets for any other purpose.

## **RULE 26.8. BANKING OF LIMITED EMISSION REDUCTIONS**

### **(a) LIMITED EMISSION REDUCTION CREDITS 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.

## **RULE 26.9 BANKING 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 a 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 transferor, 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.

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

**(a) 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.