

## RULE 1402

### Emission Reduction Credit Registry

#### (A) General

- (1) Emission Reduction Credit Registry:
  - (a) An Emission Reduction Credit Registry is hereby established for the District.
    - (i) This shall be known as the Mojave Desert Air Quality Management District Emission Reduction Credit Registry (MDAQMD ERC Registry).
  - (b) The MDAQMD ERC Registry shall consist of ERCs which have met all the following requirements:
    - (i) A timely and complete application for ERCs has been received pursuant to Section (B)(1);
    - (ii) The amount of ERCs have been calculated and approved by the APCO pursuant to District Rule 1404;
    - (iii) The amount and ownership of the ERCs has been entered into the Registry;
    - (iv) A Certificate evidencing the amount, type and class of ERCs has been properly issued; and
    - (v) The ERCs have not yet been used as Offsets.
  - (c) ERCs contained in the MDAQMD ERC Registry are permanent until used by the owner or by any person to whom the ERC has been transferred.
  - (d) Subsequent changes in District Rules or Regulations to require a type of emission reduction which has previously been banked shall not reduce or eliminate such ERC.

- (e) Emission reductions are eligible to become ERCs if:
  - (i) Such reductions are AERs and meet the requirements of 1401(A) and 1404(A)(3); or
  - (ii) Such reductions were:
    - a. previously recognized by the District in writing, pursuant to a formal internal tracking mechanism, as eligible for use as Offsets pursuant to Regulation XIII--New Source Review; and
    - b. included in the emissions inventory after the shutdown or modification occurred.
- (2) Registration List:
  - (a) All ERCs contained in the MDAQMD ERC Registry shall be listed in the Registration List.
  - (b) The Registration List entry for each ERC shall contain the following information:
    - (i) The name, address, and telephone number of the owner(s) of the ERC;
    - (ii) The amount and type of approved ERC;
    - (iii) The Class of ERC (Class "A" ERC or Class "B" ERC);
    - (iv) Any information regarding liens, encumbrances and other changes of record.
  - (c) The Registration List shall contain an entry for each ERC until such ERC is used, or otherwise altered by operation of law.
- (3) ERC Certificate:
  - (a) All ERCs issued pursuant to this regulation shall be evidenced by a Certificate issued by the District and signed by the APCO.
  - (b) The Certificate shall contain the same information as is contained in the Registration List entry for the issued ERC.
  - (c) The APCO shall prescribe the form of the Certificate.

- (d) ERC Certificates shall not constitute instruments, securities or any other form of property.
- (4) Ownership of ERCs:
- (a) Initial title to approved ERCs shall be held by the owner(s) of the emissions unit(s) which produced the reduction in emission of air contaminants, in the same manner as such owner(s) hold title to the facility in which the emissions unit is located.
  - (b) Title for any approved ERC which has been transferred, in whole or in part, by written conveyance or operation of law from one person to another shall be held by the owner(s) in the manner indicated in the written conveyance or as indicated by the operation of law.
  - (c) The owner(s) of an ERC as listed in the Registration List and on the ERC Certificate shall have the exclusive right to use such ERCs and/or to authorize such use.
- (5) Classes of ERCs:
- (a) ERCs shall be classified as either Class "A" ERCs or as Class "B" ERCs.
  - (b) ERCs shall be classified as Class "A" ERCs if:
    - (i) The emissions reduction is the result of a modification or limitation of use of existing equipment such that after the reduction is made the equipment remains in service with an authority to construct or permit to operate pursuant to Regulation II - Permits or Regulation XII - Federal Operating Permits; or
    - (ii) The emission reduction is the result of a shutdown of emission unit(s) and there will likely be no resulting emission increase by a replacement emission unit(s). The APCO shall determine that there will likely be no resulting emission increase by a replacement emission unit(s) using the following factors:
      - a. The product manufactured by or the material processed through the emission unit(s) are products or materials which will not likely be replaced by new or existing emission unit(s) located within the District;
      - b. The emissions from any replacement emission unit(s) will not exceed the emission level of the shutdown unit;

- c. The emissions increase from any replacement emission unit(s) must be offset under the provisions of Regulation XIII--New Source Review.
- (c) ERCs shall be classified as Class "B" ERCs if the emission reduction meets all the other requirements for AERs as set forth in District Rules 1401(A) and 1404(A)(3) but does not qualify as a Class "A" ERC.

## (B) Issuance of Emission Reduction Credits

### (1) Applications for ERCs:

- (a) ERCs shall be applied for, in writing, by the owner or operator of the emissions unit from which the emission reduction has occurred or will occur, to the APCO.
- (b) Applications for ERCs shall be clearly identified as such and shall contain the following:
  - (i) The name, address, and telephone number of the owner(s) of the emissions unit and a contact person if necessary.
  - (ii) Information sufficient to identify the source and/or causation of the emission reductions.
  - (iii) Information sufficient to allow the calculations set forth in Rule 1404 to be performed.
- (c) No application for ERCs will be accepted until the applicable fees as specified in District Rule 313 have been paid.
- (d) Applications for ERCs shall be submitted in a timely manner determined as follows:
  - (i) For emissions reductions which occurred prior to June 28, 1995, an application for ERCs shall be submitted within one (1) year after June 28, 1995.
  - (ii) For emission reductions which occurred after June 28, 1995, an application for ERCs shall be submitted within six (6) months after any of the following:
    - a. District issuance of an Authority to Construct pursuant to District Regulation II - Permits; or

- b. District issuance of an Authority to Construct pursuant to Regulation XIII - New Source Review; or
  - c. District issuance of a modified permit pursuant to Regulation II - Permits; or
  - d. District issuance of a modified permit pursuant to Regulation XII - Federal Operating Permits; or
  - e. for emissions units not subject to permitting requirements, the completion of the modification or shutdown.
- (iii) Notwithstanding subsections (1)(c)(i) and (ii) above, a timely application for a Military Base subject to closure or realignment shall be determined pursuant to the provisions of Health & Safety Code §40709.7.
- (e) Applications for ERCs may be withdrawn at any time by the applicant.
    - (i) An applicant who withdraws an application shall only be entitled to a partial refund of fees as set forth in District Rule 313(E).
    - (ii) A withdrawn application for ERCs does not preclude an applicant from later submitting an application for ERCs based upon the same emissions reductions as those contained in the withdrawn application as long as such resubmitted application is timely.
- (2) Determination of Completeness:
    - (a) The APCO shall determine if the application is complete no later than thirty (30) days after the receipt of the application, or after such longer time as both the applicant and the APCO may agree upon in writing.
      - (i) An application is complete when it contains the information required by subsection (B)(1)(b) above.
    - (b) Upon making this determination, the APCO shall notify the applicant, in writing, that the application has been determined to be complete or incomplete.
      - (i) If the application is determined to be incomplete:
        - a. The notification shall specify which part of the application is incomplete and how it can be made complete; and

- b. The applicant for ERC shall have thirty (30) days to submit the additional information, unless another time period is specified by the APCO in writing.
  - c. The applicant for an ERC may request, and the APCO may grant for good cause shown, extension(s) of time for submission of the additional information. Such request and any extension(s) granted shall be in writing.
  - d. If the applicant does not submit the additional information within the time period specified or extended the application shall be deemed withdrawn by the applicant.
- (3) Calculation of ERCs:
- (a) Calculation of ERCs shall be performed pursuant to the provisions of District [Rule 1404](#).
- (4) Proposed ERCs:
- (a) Within thirty (30) days after the application for ERCs has been determined to be complete, or after such longer time as both the applicant and the APCO may agree upon in writing, the APCO shall determine, in compliance with the standards set forth in subsection (C) below, to issue or deny the ERCs.
    - (i) The APCO shall notify the applicant in writing of the determination.
      - a. If the determination is to issue ERCs then the notice shall include the amount type and class of the ERCs proposed to be issued; or
      - b. If the determination is to deny the ERCs then the notice shall include an explanation of the reason for the denial.
    - (ii) The information submitted by the applicant and the APCO's analysis shall be transmitted to the California Air Resources Board and the USEPA regional office no later than the date of publication of the notice of the preliminary determination pursuant to [1402\(B\)\(5\)\(a\)](#), if the amount of ERCs proposed to be granted are greater than any of the following amounts:

<u>Pollutant</u>	<u>ERC Threshold</u>
No <sub>x</sub>	50,000 lbs/yr
So <sub>x</sub>	50,000 lbs/yr
ROC	50,000 lbs/yr
PM <sub>10</sub>	30,000 lbs/yr
CO	200,000 lbs/yr
H <sub>2</sub> S	20,000 lbs/yr
Pb	1,200 lbs/yr

(5) Public Notice and Comment:

- (a) After the APCO has determined to issue ERCs, the APCO shall publish a notice in at least one daily newspaper of general circulation within the District and shall send a copy of the notice to all persons who are included on a list of persons requesting notice, on file with the Clerk of the Board for the District.
- (b) The notice shall provide the following:
  - (i) The name and address of the applicant and the facility generating the emissions reductions, if different;
  - (ii) The amount, type and class of ERCs proposed to be issued;
  - (iii) The name, address and telephone number of a person from whom additional information may be obtained; and
  - (iv) At least a thirty day period in which interested persons may submit written comments to the District regarding the proposed issuance of the ERCs.
- (c) The APCO shall accept all germane and nonfrivolous comments which are received during the comment period. The APCO shall consider such comments prior to issuance of the ERCs.
- (d) The APCO shall include all accepted comments with the records regarding the issuance of the ERCs and shall retain such records for a period of at least five (5) years.

- (6) Issuance of ERCs:
  - (a) Upon the expiration of the public comment period; after review of comments accepted, if any; and upon payment of the appropriate analysis fee, if any, the APCO shall issue the ERCs by including the appropriate information in the Registration List and issuing a Certificate.
  - (b) The APCO shall provide written notice of the final action to the applicant (and to USEPA and the California Air Resources Board, if the preliminary determination was sent to such agencies pursuant to (B)(4)(a)(ii)).

(C) Standards for Granting Emission Reduction Credits

- (1) ERCs shall be real, enforceable, permanent, quantifiable and surplus.
- (2) ERCs shall only be granted for emissions reductions which are not otherwise required by Federal, State or District law, rule, order, permit or requirement.
- (3) ERCs shall only be granted if the applicable changes to permits have occurred or other enforceable documents have been submitted as indicated.
  - (a) If the emission reduction is the result of a modification or limitation of use of existing equipment:
    - (i) A revised permit to operate containing federally enforceable conditions reflecting the modification and/or limitations has been issued.
  - (b) If the emission reduction is the result of a shutdown of permit unit(s):
    - (i) The relevant permits have been surrendered and voided.
    - (ii) The emissions unit(s) for which the permits were surrendered will not be re-permitted within the District, unless their emissions are completely offset pursuant to Regulation XIII - New Source Review.
  - (c) If the emission reduction is the result of a shutdown of a emission unit(s) which did not have a District permit:
    - (i) A valid District permit has been obtained or a contract enforceable by the District has been executed by the applicant which contains enforceable limitations reflecting the reduced emissions.



- (d) If the emission reduction is the result of the application of a more efficient control technology to a previously unpermitted emission unit(s):
    - (i) A valid District permit has been obtained which contains enforceable limitations reflecting the reduced emissions.
  - (4) If the emission reduction originates from a previously unpermitted emission unit, no ERCs may be granted unless the emissions are included in the District's Emissions Inventory.
- (D) **Transfer, Encumbrance, and Readjustment of Emission Reduction Credits**
- (1) ERCs may be transferred in whole or in part by written conveyance or by operation of law from one person to another in accordance with the provisions contained in this rule.
  - (2) A voluntary transfer of ownership in whole or in part shall be performed according to the following procedure:
    - (a) The owner(s) of the ERC may file a request for transfer of ownership with the APCO. Such request shall include:
      - (i) Information regarding the new owner of the ERC sufficient for entry in the registry.
      - (ii) An executed copy of the instrument transferring the ERC or a memorandum describing the transaction which transfers the ERC which is signed by all parties to the transaction.
      - (iii) The purchase price, if any, of the ERCs in terms of total cost by pollutant purchased.
      - (iv) The existing ERC Certificate(s) for the ERCs to be transferred.
    - (b) Upon payment of the appropriate transfer fee as set forth in District [Rule 313](#), the APCO shall cancel the existing ERC Certificate(s) and issue new certificate(s) in the name of the new owner and indicate the transfer in the Registration List.

- (3) An involuntary transfer of ERCs shall be performed pursuant to the following procedure:
- (a) The transferee shall file with the District a certified copy of the document effecting the transfer. The transferee shall certify that the document represents a transfer which is final for all purposes.
  - (b) Upon payment of the appropriate transfer fee as set forth in District [Rule 313](#), the APCO shall demand the original ERC Certificate from the original owner. Upon the surrender of the existing ERC Certificate to the District or after 90 days (whichever comes first), the existing ERC Certificate shall be considered cancelled, and the APCO shall issue a new ERC Certificate and indicate the involuntary nature of the transfer in the registry.
  - (c) The APCO shall thereafter not allow the use or subsequent transfer of the ERC by the original owner.
- (4) Other encumbrances upon ERCs shall be placed as follows:
- (a) The holder of the encumbrance shall file with the District a certified copy of the final document creating the encumbrance.
  - (b) Upon payment of the appropriate transfer fee as set forth in District [Rule 313](#), the APCO shall indicate the encumbrance in the Registration List.
  - (c) Thereafter the APCO shall not allow the use or subsequent transfer of the ERC by the owner without receipt of a certified copy of the satisfaction of the encumbrance or by the removal of the incumbrance by its holder of the encumbrance.
- (5) Readjustments of ERCs due to the readjustment of AERs pursuant to District [Rule 1404](#) shall be processed as follows:
- (a) The owner of the ERC shall file an application to adjust the AER.
  - (b) The APCO shall determine if the adjustment of the AER is warranted and the amount of such adjustment pursuant to the provisions of District [Rule 1404](#).
  - (c) After the APCO has determined the amount of the adjustment, upon surrender of the prior ERC Certificate, the APCO shall issue an adjusted ERC Certificate to the owner.

- (6) Any transfer of an ERC shall not modify or otherwise alter the requirements contained in a permit or contract which render the ERC real, enforceable, permanent and quantifiable.
- (7) Notwithstanding any other provision of law, conflicting interests in ERCs shall rank in priority according to the time of filing with the District.

(E) Use of Emission Reduction Credits

- (1) Class "A" ERCs:
  - (a) Class "A" ERCs may be used as offsets in accordance with the provisions of Regulation XIII--New Source Review.
- (2) Class "B" ERCs:
  - (a) Class "B" ERCs may not be used as offsets unless and until they have been reclassified as Class "A" ERCs.
  - (b) Class "B" ERCs may be reclassified as Class "A" ERCs as follows:
    - (i) The owner of the Class "B" ERC applies to the APCO in writing for reclassification.
    - (ii) The APCO determines that the ERC now meets the requirements for Class "A" status. The APCO shall consider all relevant factors including:
      - a. The length of time the emission unit(s) have been out of service;
      - b. Whether other similar emission unit(s) have experienced increased activity caused by the shutdown;
      - c. Whether a permit application for a replacement emission unit has been filed within one year of the date of the shutdown.
    - (iii) The APCO notifies the owner of the Class "B" ERC of his/her determination in writing.

- (iv) If the APCO determines that reclassification is warranted then, upon receipt of the Class "B" ERC Certificate and payment of the appropriate fee as set forth in District [Rule 313](#), the APCO shall cancel the Class "B" ERC Certificate and issue a Class "A" Certificate to the owner.

(F) **Appeal of the Granting or Denial of Emission Reduction Credits**

- (1) An applicant for ERCs may, within 30 days after receipt of the notice of denial of ERCs, petition the District Hearing Board for a hearing on whether the application for ERCs was properly refused.
- (2) The procedural provisions applicable to such a hearing shall be the same as those used for hearings regarding the denial of a permit application pursuant to [Health & Safety Code §42302](#).

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