

SECTION 12.7: EMISSION REDUCTION CREDITS

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12.7 Emission Reduction Credits (ERCs)

12.7.1 Applicability

- (a) Section 12.7 provides for the creation, banking, trading, and use of ERCs. This section applies to the following:
 - (1) A stationary source with a federally enforceable offset requirement;
 - (2) A stationary source with a federally enforceable permit that contains requirements associated with ERCs; and
 - (3) Any party involved with the trading of ERCs.
- (b) The Control Officer may allow the issuance, trading, use, redemption or banking of eligible ERCs for CO, PM₁₀, VOC, and NO_x in accordance with the limitations set forth in this section.
- (c) ERCs earned pursuant to this section are a privilege and do not constitute an interest in property or create any contractual rights.

12.7.2 Emission Reduction Credit (ERC) Registry and Tracking System

- (a) The Control Officer shall establish and maintain an ERC Registry to record and track all ERC and offset requirement transactions.
- (b) The ERC Registry established by the Control Officer shall be accessible to the public and shall contain the following information for all ERC and offset requirement transactions:
 - (1) The owner's name;
 - (2) The project that generated the ERCs;
 - (3) The pollutant; and
 - (4) The quantity of ERCs.
- (c) The ERC Registry shall not contain information that has been deemed confidential pursuant to Section 12.6 and Nevada Revised Statutes Chapters 239 and 445B.
- (d) When an ERC is recorded in the ERC Registry under the owner's account, it is banked. When an ERC is redeemed to satisfy a stationary source's offset requirement, the ERC is no longer banked because it is expended and no longer available for use.

12.7.3 Procedures for Processing an ERC Application

- (a) An application for generating an ERC pursuant to this section shall be submitted to the Control Officer. The applicant shall use the current ERC application form, as provided by the department. Such application must be signed by the stationary source owner, operator or responsible official and the applicant must pay a non-refundable application fee at time of submittal pursuant to these AQRs.
- (b) An ERC application must be submitted to the Control Officer within the following time limits; otherwise, the ERC application shall be invalid:
 - (1) For a source with a partial shutdown, the application must be submitted within one hundred and eighty (180) calendar days after the date of issuance of the revised federally enforceable permit containing the conditions associated with a partial shutdown that generated the emission reductions for the requested ERCs;
 - (2) For a source with a full (source wide) shutdown, the application must be submitted within one hundred and eighty (180) calendar days after the date of the voluntary termination of the federally enforceable permit containing the conditions associated with a stationary source shutdown that generated the emission reductions for the requested ERCs;
 - (3) For a source with a reconfiguration/operational change, the application must be submitted after the stationary source has operated under normal conditions for at least twelve (12) consecutive months after the date of issuance of the revised federally enforceable permit containing the conditions associated with a change that generated the emission reductions for the requested ERCs. The normal operational period shall not include shakedown or phase-in operations;
 - (4) For a source with a reconfiguration/operational change and a partial shutdown, the application must be submitted after the source has operated under normal conditions for at least twelve (12) consecutive months after the issuance of the revised federally enforceable permit containing the conditions associated with the change and the partial shutdown that generated the emission reductions for the requested ERCs. The normal operational period shall not include shakedown or phase-in operations.
 - (5) For paragraphs (3) and (4) of Section 12.7.3(b), the application must be submitted within five (5) years after the issuance of the

revised federally enforceable permit containing the conditions associated with the change that generated the emission reductions for the requested ERCs.

- (c) In addition to paragraphs (a) and (b) of Section 12.7.3, an ERC application is eligible for consideration if the following requirements are met:
 - (1) The application must apply to a stationary source;
 - (2) Emission units associated with the application must be compliant with all permit conditions for all timeframes associated with the emission reductions;
 - (3) Emission reductions must be based on a shutdown, application of innovative control technologies, and/or process improvements; and
 - (4) Emission reductions must be for CO, PM₁₀, VOC, or NO_x.
- (d) The Control Officer shall determine the completeness of an application submittal within sixty (60) calendar days of receipt of such an application. An application shall be deemed complete only when the Control Officer has all necessary information to process the application. At a minimum, the applicant shall provide all required information as indicated in the current ERC application form and any additional information upon request from the Control Officer. If such application is deemed incomplete, then the Control Officer shall request additional information as necessary to determine eligibility of such emission reductions.
- (e) When the application is deemed complete, the Control Officer shall draft a proposed ERC determination of the approvability of the requested ERCs based on the criteria in Section 12.7.5. If the Control Officer requires additional information from the applicant during the analysis, the Control Officer shall issue an incompleteness letter to the applicant to request the additional information. Upon receipt of the additional information the Control Officer shall determine if the application is complete in accordance with Section 12.7.3(d).
- (f) The Control Officer shall provide EPA the proposed final ERC determination for review and comment for a period not to exceed thirty (30) calendar days. After the 30-day EPA review and comment period, the Control Officer shall consider any comments received from EPA and update the proposed ERC determination, if necessary.

- (g) Within sixty (60) calendar days after the EPA review and comment period, public participation of the proposed ERC determination shall be accomplished in accordance with Section 12.7.6.
- (h) Within sixty (60) calendar days after the public comment period or after the public hearing, whichever occurs later, the Control Officer shall consider all comments received during the public comment period and issue to the applicant a final ERC determination of the approvability of the requested ERCs based on the criteria in Section 12.7.5. The final ERC determination shall contain, at a minimum the following:
 - (1) The applicant's information;
 - (2) The stationary source information;
 - (3) The quantity and type of ERCs to be approved and issued, if any, per specific pollutant;
 - (4) Any conditions that must be satisfied prior to the ERCs becoming effective;
 - (5) The decision to approve or disapprove the ERC application, in full or in part; and
 - (6) If ERCs are approved for issuance, the Control Officer shall record the issuance transaction in the ERC Registry. The Control Officer shall produce an ERC Credit Balance Summary Report and include the report as an attachment to the final ERC determination.
- (i) If the Control Officer does not approve the applicant's ERC request, the applicant may, within twenty (20) calendar days after receipt of the final ERC determination, petition the Clark County Air Pollution Control Hearing Board in writing for a hearing to determine whether the Control Officer properly disapproved the applicant's ERC request based on the approvability criteria in Section 12.7.5. As applicable, Section 7 of these AQRs shall govern the appeals process.

12.7.4 Limits on the Use of ERCs

The ERC shall not provide or allow:

- (a) Authority for or the recognition of any pre-existing vested right to emit any regulated air pollutant;
- (b) Exemption from the RACT, BACT, LAER or any other control requirement pursuant to these AQRs;

- (c) Dual accounting of emission reductions that have already been included as part of Clark County's baseline emissions in the Nevada SIP;
- (d) For emission reductions already required by law;
- (e) Authority for or the recognition of any rights that would be contrary to applicable law; or
- (f) An exemption to a stationary source from any other air pollution control requirements under federal, state or local laws, rules and regulations.

12.7.5 Criteria for Granting ERCs

The Control Officer shall not issue any ERC unless the following requirements are met:

- (a) Emission reductions used to generate the ERC shall be real, surplus, permanent, quantifiable, and federally enforceable.
- (b) A revised federally enforceable Minor Source Permit to Operate or Part 70 Operating Permit has been issued which contains practicably enforceable conditions to limit the emission unit's PTE to the allowable emissions of the stationary source.
- (c) The emissions baseline for determining ERCs for emissions reductions is the emissions limit under the Nevada SIP in effect at the time the application for a federally enforceable authority to construct is filed, except that the emissions baseline shall be the actual emissions of the emissions unit from which the ERC is obtained when:
 - (1) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or
 - (2) The Nevada SIP does not contain an emission limitation for that emissions unit.
- (d) Where the Nevada SIP requires certain equipment controls in lieu of an emission limitation (e.g., floating roof tanks for petroleum storage), baseline allowable emissions shall be based on actual operating conditions for the previous two (2) year period (i.e., actual throughput and vapor pressures) in conjunction with the required equipment controls.

- (e) ERCs for an emissions reduction shall only be granted to the extent that the Control Officer has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I, or it has not been relied on in an attainment demonstration or reasonable further progress demonstration in a nonattainment area plan.
- (f) Stationary sources with existing actual emissions exceeding the allowable emissions specified in the source's federally enforceable authority to construct or operating permit (whichever is in effect) are not eligible to apply for ERCs.
- (g) Where a stationary source is subject to both (1) an emission limitation established in a New Source Performance Standard (NSPS) or a National Emission Standard for Hazardous Air Pollutants (NESHAPs), (*i.e.*, requirements under Sections 111 and 112, respectively, of the Act); and (2) a different Nevada SIP limitation, the more stringent limitation shall be used as the baseline for determining ERCs. The difference in emissions between the Nevada SIP and the NSPS or NESHAPs for such a stationary source shall not be used as a basis for ERCs. However, if a stationary source is not subject to a NSPS or NESHAPs emissions limit, for example if its construction had commenced prior to the proposal of an NSPS or NESHAPs for that source category, ERCs may be granted if the stationary source accepts a federally enforceable emission limit that is more stringent than the Nevada SIP emission limitation.
- (h) Where the emissions limit under the Nevada SIP allows greater emissions than the potential to emit of the emissions unit, ERCs shall only be creditable for emission reductions below the allowable limit of the stationary source and the permitted emissions unit.
- (i) Stationary source shutdowns.
 - (1) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be approved only if the shutdown or curtailment occurred after the last day of the base year for the SIP planning process. The Control Officer may consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emissions units. However, in no event will ERCs be approved for shutdowns that occurred prior to November 15, 1990.
 - (2) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below base-

line levels and not meeting the criteria in paragraph (i)(1) of Section 12.7.5 may be used in the absence of an approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions of paragraph (i)(1) of Section 12.7.5 are observed.

12.7.6 Notice of Proposed Action and Public Hearing Procedures for ERCs

- (a) After receipt of a complete ERC application and issuance of proposed ERC determination, the Control Officer shall publish in a newspaper of general circulation within Clark County, Nevada, and on the department's web site a notice of the following items regarding the applicant:
 - (1) Submittal date of the ERC application;
 - (2) Availability of information;
 - (3) Availability of review and analysis of the application based on its compliance with each applicable regulation;
 - (4) A summary of the required air pollution controls (if applicable);
 - (5) A summary of the number and type of ERCs requested and whether the Control Officer proposes to approve or disapprove the ERC request in whole or in part;
 - (6) Availability of the proposed ERC determination documents.
 - (7) Availability of revised federally enforceable authority to construct or operating permit conditions (if applicable);
 - (8) Opportunity for any person to submit written comments on the ERC application, relevant information or data and the proposed ERC determination.
- (b) The applicant shall reimburse DAQEM for all newspaper costs associated with the public notice.
- (c) The notice shall indicate that all comments must be submitted to the Control Officer in writing within thirty (30) calendar days from the publication date of the Notice of Proposed Action.
- (d) The notice shall indicate the opportunity for any person to request a public hearing.

- (e) During the thirty (30) day public comment period specified in Section 12.7.6(c), any person may petition the Control Officer, in writing, for a public hearing. All such petitions shall contain: the petitioner's name, address, daytime telephone number; and comments related to the proposed action.
- (f) If a proper petition is filed that contains comments related to the proposed action and the Control Officer determines that there is a significant degree of public interest, the Control Officer shall hold a public hearing no sooner than thirty (30) days after the date of the Notice of Proposed Action but no later than seventy (70) days, after the date of the Notice of Proposed Action. In determining if a significant degree of public interest exists, the Control Officer shall consider all relevant factors, including, but not limited to, the number of petitioners and the nature of their concerns as stated in their petitions.
- (g) The petitioner and the applicant shall receive no less than seven (7) days' prior written notice of the date and location of the public hearing. Any notice of hearing shall also be posted on the department's website no less than seven (7) days prior to the public hearing.

12.7.7 ERC Transfer Requirements

- (a) ERCs may be transferred in whole or in part.
- (b) An ERC transfer request shall be limited to two (2) parties, i.e., the current owner of the ERCs (transferor) and the transferee.
- (c) All applicable Section 18 fees associated with the ERC transfer shall be paid in full prior to or upon submission of the ERC transfer request.
- (d) The ERC Credit Balance Summary Report on or after the effective date of this section of the AQRs, signed by the Control Officer, shall be the sole proof of ownership of ERCs. The ERC Credit Balance Summary Report shall be dated; therefore, each ERC Credit Balance Summary Report will supersede all previous versions of the report. The ERC Credit Balance Summary Report reflects the balance of all ERC transactions contained in the registry for the owner.
- (e) Only the owner of an ERC, as indicated on the ERC Credit Balance Summary Report, may deposit, withdraw, redeem or transfer ERCs.
- (f) The owner of ERCs must submit a request to the Control Officer to transfer ERCs to another party. To be considered valid, the ERC transfer request must:
 - (1) Be signed and dated by the owner;

- (2) Be on the owner's letterhead;
 - (3) Contain the owner's information: name, address, city, state, zip, and phone number;
 - (4) Contain the transferee's information: name, address, city, state, zip, and phone number;
 - (5) Specify the quantity of ERCs being transferred for each air pollutant specified in Section 12.7.1(b); and
 - (6) Identify the project name associated with the origin (as specified in the final ERC determination) of the ERCs being transferred.
- (g) Transfer of the banked ERCs shall become effective on the date the department notifies both parties of the transfer, which signifies that the transfer is complete, approved and recorded in the registry. The notification shall be on department letterhead and signed by the Control Officer. This notification shall contain an ERC Credit Balance Summary Report signed by the Control Officer that reflects the balance of all completed transactions for the owner.

12.7.8 Procedures for Redeeming ERCs

- (a) The owner of ERCs shall submit a request to the Control Officer to redeem ERCs for use at a specific stationary source and include the applicable transaction fee pursuant to Section 18. To be considered valid, the redemption request shall:
- (1) Be signed and dated by the owner;
 - (2) Be on the owner's official letterhead;
 - (3) Contain the owner's information: name, address, city, state, zip, and phone number;
 - (4) Contain the stationary source's information for which the ERCs are being redeemed against: name, authority to construct and/or operating permit number (generically referred to as the facility number), physical address, city, state, zip, and phone number;
 - (5) Specify the quantity of ERCs being redeemed for each air pollutant specified in Section 12.7.1(b); and
 - (6) Identify the project name associated with the origin (as specified in the final ERC determination) of the ERCs being redeemed.

- (7) Redemption of ERCs shall become final and effective on the issuance date of the federally enforceable permit containing the ERC redemption satisfying an offset requirement. Issuance of the federally enforceable permit containing the ERC redemption also signifies final approval of the redeemed ERCs.

12.7.9 Additional Control Officer Authority Related to ERCs

- (a) The Control Officer shall have the authority to retire banked ERCs or impose a temporary or permanent moratorium on the ERC Program for the following purposes:
 - (1) To prevent an exceedance of the National Ambient Air Quality Standards;
 - (2) To establish baseline emissions or future emission projections for a State Implementation Plan;
 - (3) To establish baseline emissions or future emission projections for a Maintenance Plan;
 - (4) To ensure reasonable further progress of the SIP; and,
 - (5) To control air quality within an airshed or nonattainment area.
- (b) The Control Officer shall publish on the department's website for a period of thirty (30) days a notice listing the following items regarding a proposed retirement of ERCs:
 - (1) Availability of information;
 - (2) A summary of the proposed action;
 - (3) A summary of the proposed action justification;
 - (4) The authority of the proposed action;
 - (5) A summary of the ownership, amount, and type of ERCs proposed for retirement;
 - (6) Opportunity for an affected person to submit written comments during the notice period on the proposed action and relevant information or data. The Control Officer shall consider such comments prior to implementing the action.
- (c) The Control Officer shall publish on the department's website for a period of thirty (30) days a notice listing the following items regarding a proposed ERC Program Moratorium:

- (1) Availability of information;
 - (2) A summary of the proposed action;
 - (3) A summary of the proposed action justification;
 - (4) The authority of the proposed action;
 - (5) A summary of the ownership, number, type of ERCs proposed for retirement or subject to a moratorium;
 - (6) Opportunity for an affected person to submit written comments during the notice period on the proposed action and relevant information or data. The Control Officer shall consider such comments prior to implementing the action.
- (d) In addition, the Control Officer shall notify each owner of ERCs affected by the proposed action at least seven (7) calendar days prior proposed action.

12.7.10 ERC Reciprocity

The Control Officer may grant reciprocity for banking, transacting and redeeming ERCs that are issued by the Nevada Division of Environmental Protection (NDEP) if the NDEP ERC issuance requirements are equivalent to or more stringent than the applicable requirements of Section 12.7 subject to the following conditions:

- (a) NDEP shall submit the ERC Reciprocity Request to the Control Officer on behalf of the ERC owner. The ERC owner's request shall be submitted with the NDEP transmittal document.
- (b) All documentation associated with the ERCs issued by the NDEP shall be submitted with the ERC Reciprocity Request, including, but not limited to, the following: the ERC application and technical support document; eligibility determinations, completeness determinations, the final ERC determination, public notices, public comments, appeal documents, the operating permit as it was prior to the ERC issuance and the operating permit as modified to accommodate the ERCs.

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