



Division of Air Pollution Control

Response to Comments Draft Rule Language Comment Period

Rules: 3745-111-01 through 3745-111-05, “ERC Banking Program”

Agency Contact for this Package

Division Contact: Sudhir Singhal, Division of Air Pollution Control, (614) 644-3684, sudhir.singhal@epa.ohio.gov

Ohio EPA provided a 30 day comment period which ended on November 24, 2014. This document summarizes the comments and questions received at the public hearing and/or during the associated comment period.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format. The name of the commenter follows the comment in parentheses.

3745-111-01, “Definitions”

Comment 1: Referenced Materials: The Utilities recommend that Ohio EPA update the documents incorporated by reference under Ohio Adm. Code 3745-111-01(K). It is likely that the 2006 and 2008 references are not up-to-date. Further, there have been revisions to the attainment areas as well as new NAAQS; this may not be reflected in the earlier references to the Code of Federal Regulations. **[Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]**

Response 1: Thank you for your comment.

Ohio EPA concurs with your comment. Accordingly, we have updated the references under Ohio Administrative Code (OAC) rule 3745-111-01(K).

3745-111-02, "ERC banking program for the purpose of enabling the acquisition of offsets"

Comment 2: Ohio EPA's Effective Rules Website: Ohio EPA's effective rules website entitles Ohio Adm. Code 3745-111 as "ERC Banking Program." This does not clearly identify the program as voluntary, and the Utilities recommend that Ohio EPA revise this site to include the real title of the rules: "Voluntary Emission Reduction Credit Banking Program." **[Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]**

Response 2: Thank you for pointing out the discrepancy. Ohio EPA will update the website to reflect the actual name of the Chapter, Voluntary Emission Reduction Credit Banking Program.

Comment 3: ERC Discounting: The Utilities do not believe that the Director should have the discretion to reduce the amount of ERCs in the bank for attaining or maintaining the NAAQS. However, even if the Director has the discretion to discount ERCs, there should be some transparent process. For example, how does the Director decide which offsets he intends to discount? Does he discount a percentage across the board or does he simply take the offsets from one owner? Further, in any circumstance, forfeited ERCs should be used prior to discounting any other ERCs. This should be made clear in the rules. **[Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]**

Response 3: Thank you for your comment.

Ohio EPA believes that the Director has and should have the discretion to utilize ERCs in the bank for the purpose of helping to attain and maintain the NAAQS. Utilizing ERCs is often a cost-effective method to reduce emissions within a particular air shed because costly new control programs can be avoided.

To date Ohio EPA has not found it necessary to discount ERCs so we have not yet explored how the discounting would occur with respect to the questions presented by the commenter. In the event Ohio EPA found it necessary to discount ERCs, Ohio EPA would use a transparent process ensuring stakeholder input would occur. If discounting was necessary it would be a part of Ohio's State Implementation Plan process and likely be necessary to demonstrate or

ensure attainment in an area. Ohio's State Implementation Process is a transparent process that includes public participation prior to any submittal by Ohio EPA. In general, Ohio EPA does agree that any forfeited ERCs would likely be used prior to discounting ERCs that have not been forfeited. Ohio EPA does not wish to incorporate detailed provisions regarding this process within our rules but would rather retain flexibility to ensure that if the need for discounting arises, Ohio EPA maintains options that will work best for all ERC owners that may be affected.

3745-111-03, "ERC generation for the purpose of enabling the acquisition of offsets"

Comment 4: Coordination with Emissions Inventory Tracking: The Utilities also recommend that Ohio EPA include rules that require the Director to conduct an annual verification of the emissions in the emissions inventory to determine what emission reductions are available as ERCs. In the past, Ohio EPA has inadvertently removed emissions from the emissions inventory that were surplus, quantifiable, and permanent reductions and, thus, available for participation in the ERC Banking Program. By including an annual verification, emission sources would be assured that emission reductions will not be inadvertently eliminated from the emissions inventory and, therefore, unavailable as ERCs. An annual verification would also allow Ohio EPA to determine if notification letters need to be sent to sources that have reduced emissions. **[Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]**

Response 4: Thank you for your comment.

Ohio EPA currently has a process in place to track potential ERCs from shutdown sources. This system keeps track of shutdown sources but does not automatically trigger a verification process unless the credits are needed.

Ohio EPA recommends to companies that they verify their ERCs to ensure that the ERCs can be used in the future. However, since the ERC process is voluntary, companies are not required to do so.

At this time, Ohio EPA does not plan to put into place a process to verify each and every shutdown source. Verifying

shutdown sources is a very labor intensive process that, in many cases, would be wasteful because credits are often never used. Instead, Ohio EPA will go through the verification process when the credits are needed.

Ohio EPA is not aware of a case where ERCs have been inadvertently removed from the emissions inventory.

Comment 5:

Forfeiture of ERCs: The rules provide a process for forfeiture of ERCs where a facility does not respond to the shutdown notification under Ohio Adm. Code 3745-111-03(E)(1). While the Utilities do not object to this provision, the Utilities recommend that Ohio EPA include rules that would allow Ohio EPA to include these ERCs in the banking program and make them available to participants in the program. As written, the Director has discretion to use these ERCs as the Director deems necessary. While the Utilities understand that the rules provide the Director discretion to use ERCs to attain or maintain the National Ambient Air Quality Standards, the Utilities believe that Ohio EPA should encourage participation in this program by making forfeited ERCs available under the Banking Program. **[Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]**

Response 5:

Thank you for your comment.

As is evident from OAC rule 3745-111-03(E), Ohio EPA will make every effort to contact the owner, operator or legal representative, including public notice in a Prominent newspaper in the area of the shutdown air contaminant source(s) or facility, prior to forfeiting them. Further, OAC rule 3745-111-03(E)(2)(d) states that “ Forfeited ERCs shall be made available free of charge by Ohio EPA to a stationary source, at the director's discretion, for use as emission offsets provided the use of ERCs meet the requirements of OAC Chapter 3745-31....”.

Based on the existing rules, forfeited ERCs become available for use by any party unless the director has used his discretion to utilize them in order to attain or maintain the NAAQS.

Also, see response to comment # 3.

Comment 6: Verification of ERCs: The Utilities recommend a revision to Ohio Adm. Code 3745-111-03(D) that would require the Director to make a determination that ERCs are verified within 90 days after a complete application has been submitted to Ohio EPA. **[Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]**

Response 6: Thank you for your comment.

ERCs are used when companies are installing a new or modified source where offsets are required to be obtained. When this happens, the companies must apply for and obtain an installation permit. During the director's review of the installation permit application, the director must verify that the ERCs are surplus, quantifiable, and permanent reductions available for use. The permit process already has a processing deadline required by law (180 days from the date of submittal of a complete application) so the verification of the ERCs must be completed within this same time. Because the permit process already as a processing deadline that includes the verification process, then Ohio EPA believes that there is not a need for a separate deadline for the verification process.

Comment 7: Location of Emission Offsets: Ohio Adm. Code 3745-111-04(B) cites to Ohio Adm. Code 3745-31-26(A)(7). This provision is no longer part of the regulations and should be omitted. **[Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]**

Response 7: Thank you for your comment.

Ohio EPA concurs with your comment. Accordingly, we have updated OAC rule 3745-111-04(B) to cite the correct reference i.e. paragraph (B) of OAC rule 3745-31-26.

Comment 8: Annual Publication of Banking Transactions: The Utilities recommend that Ohio EPA revise Ohio Adm. Code 3745-111-05(G) to state: "The director ~~may~~ shall produce an annual publication related to banking transactions." This would provide transparency of the program's transactions. **[Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]**

Response 8: Thank you for your comment.

Ohio EPA understands your concerns; however, Ohio EPA has not found it necessary to generate an annual report to date and due to limited resources and participation in the program, does not desire to commit to an annual report process. Ohio EPA does maintain a website devoted to this program which is updated weekly with available ERCs and other useful information. Please visit: <http://www.epa.ohio.gov/dapc/erc/erc.aspx>

End of Comments