



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

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Ohio EPA held a public hearing for proposed ERC rules on May 13, 2015 and the 30 day comment period ended on May 20, 2015. 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.

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

Comment 1: 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.*

Response 1: 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.

Follow-up Comment 1: *The Utilities understand that Ohio EPA would like discretion in how it discounts ERCs. However, the Utilities still have concerns about the transparency of this process and how the Director will choose these ERCs for discounting purposes. While the Utilities believe that Ohio EPA should outline a process for discounting ERCs, at the very least, the Director should discount unverified ERCs prior to discounting verified ERCs, especially in instances where a company had the diligence to ensure that any ERCs created from a shutdown or decrease in emissions were verifiable and marketable. [Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]*

Follow-up Response 1: Thank you for your comment.

As mentioned in the response to comment for the interested party draft documents, Ohio EPA disagrees with the commenter concerning the transparency of ERC discounting process. Ohio EPA believes if discounting will be necessary, then, it would be a part of Ohio's State Implementation Plan

process. Ohio's State Implementation Process is a transparent process that includes public participation. Therefore, no change is made concerning discounting verified vs. unverified ERCs in the proposed rules.

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

Comment 2: *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.*

Response 2: 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.

Follow-up Comment 2: *The Utilities thank Ohio EPA for its response but does not agree with Ohio EPA. Several years ago, many shutdown sources were removed from the emission inventory and, therefore, could not be used as ERCs for new construction of sources. After corresponding with U.S. EPA, Ohio EPA was able to put these retired sources back into the emission inventory so that they could be used as ERCs. The Utilities believe that ERCs from shutdown sources are going to be more important in the future when the National Ambient Air Quality Standards ("NAAQS") become more stringent. More stringent NAAQS will likely result in more nonattainment areas; thus, should anyone want to build a new source, the ERCs will become a valuable commodity. Therefore, an annual verification would be valuable to ensure that all possible ERCs are in Ohio's emissions inventory. [Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]*

Follow-up Response 2: Thank you for your comment.

Ohio EPA understands your concern. However, as mentioned in the response to comment of the interested party draft documents, 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.

In the past, Ohio EPA has used shutdown credits as part of our plans to move an area into attainment from non-attainment. However, we are not aware of a situation where credits were inadvertently removed from the inventory and we subsequently added those credits back into the inventory.

Ohio EPA is aware of a situation where we asked U.S. EPA to allow us to include pre-baseline shutdown credits into our then-current emissions inventory. See June 07, 2010 letter to Susan Hedman, U.S. EPA Regional Administrator from Chris Korleski, Director. In that case, although Ohio EPA felt the approach described in the letter was fully supportable, U.S. EPA disagreed. Ohio EPA and U.S. EPA held multiple discussions during this issue. U.S. EPA refused to approve the approach and threatened to officially disapprove the

request. Because of U.S. EPA's position, on May 7, 2013, Ohio EPA had no choice but to withdraw our request.

For more information, please click on the following link:

http://www.epa.ohio.gov/dapc/SIP/E_Inventory.aspx

Note that the information is being retained on this web page at this time for historical purposes only.

Comment 3: *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.*

Response 3: 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 has 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.

Follow-up Comment 3: *Thank you for the clarification that verification of ERCs will most likely occur within the permit processing time (i.e., 180 days). For the most part, this should be acceptable to regulated sources. The Utilities only ask that Ohio EPA consider an expedited process (similar to the expedited process for permits) when a source is in a position where verification is necessary in a shorter period of time. [Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]*

Follow-up Response 3: Thank you for your comment.

Ohio EPA concurs with your comment. For rush permits, Ohio EPA will complete the verification process in a shorter period of time as needed.

Comment 4: 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.

Response 4: 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>

Follow-up Comment 4: *The Utilities disagree with Ohio EPA and believe that an annual publication of banking transactions would be useful to sources participating in the voluntary program. Thus, the Utilities reiterate the request to revise the language from "may" to "shall."* [Cheri A. Budzynski, Shumaker, Loop & Kendrick, LLP]

Follow-up Response 4: Thank you for your comment.

As mentioned in the response to comment for the interested party draft documents, Ohio EPA understands your concerns; however, Ohio EPA has not found it necessary to generate an annual report. Due to limited participation in the program and the resources, Ohio EPA does not desire to commit to an annual report process at this time.

End of Comments