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RULE

Department of Environmental Quality
Office of Air Quality and Radiation Protection
Air Quality Division

Emission Reduction Credits Banking
(LAC 33:III.Chapter 6) (AQ85)

Under the authority of the Louisiana Environmental Quality Act, particularly R.S. 30:2051 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air Quality Division Regulations by the adoption of LAC 33:III.Chapter 6, (AQ85).

These changes will address some of the following: The original language in §621.B.1 was changed to read that ERCs which have already been used or for which a permit application has been submitted (either for netting or offsetting purposes) shall not be reduced in quantity or confiscated under any circumstances. A sentence was added to read that a 30-day comment period will be allowed for the affected facility(ies) to respond to the department's confiscation or to submit an alternative emissions reduction proposal. B.4 was added to read "Refunding of Unused ERCs...If all of the ERCs withheld for the reasonable further progress demonstration are not utilized, then the department shall refund the unused ERCs to the generating sites on a pro rata basis. Refunds will be in a direct proportion to a site's individual contribution to the amount of ERCs withheld for reasonable further progress. The period of time that an ERC was held by the department will not count toward the contemporaneous period for netting nor the ten-year life for offsetting purposes."

Section 615.A was changed to read "after adoption of the final rule, shall be submitted on March 1, following the year in which the reductions occur. Thereafter, the bank balance (and the applicant's certification) should be submitted annually on March 1."

Section 615.B was changed to read "prior to adoption of the final rule, shall be submitted within six months after adoption of the final rule. Thereafter, the bank balance (and the applicant's certification) should be submitted annually on March 1."

Section 617.I was changed to handle requests for recalculation of ERCs.

Section 623.A was changed to allow a provision for partial withdrawal of ERCs.

Section 182(b)(1) of the CAAA requires all ozone nonattainment areas classified as moderate and above to submit a Reasonable Further Progress Plan by November 15, 1993 which describes how the area will achieve an actual VOC emission reduction of at least 15 percent during the first six years after enactment of the CAAA. The 1996 target level of emissions is the maximum amount of ozone season VOC emissions that can be emitted by an ozone nonattainment area in 1996 for that nonattainment area to be in compliance with the 15 percent Reasonable Further Progress Plan requirements.

either the Free Application for Federal Student Aid (FAFSA) or Renewal FAFSA, whichever is applicable to the student, by April 1, 1994. As proof of compliance with this requirement, OSFA will accept the following:

a. ESAR record indicates that the original 1994-95 application was received by the processor prior to April 16, 1994;

b. verbal or written verification, by federal processor staff to OSFA staff, that the original 1994-95 application was received by the processor prior to April 16, 1994;

c. a certificate of mailing, registered, certified, certified/return receipt requested, priority or overnight mail receipt from the United States Postal Service, or other authorized mail carriers such as United Parcel Service and Federal Express, which is dated April 1, 1994, or prior;

d. other forms of verification, including notarized or certified statements, will not be accepted as proof of compliance with the deadline requirement;

2. for the 1995-96 and subsequent award years, complete and mail either the Free Application for Federal Student Aid (FAFSA) or Renewal FAFSA, whichever is applicable to the student, by March 15, to be received at the address on the FAFSA by April 1, or the next business day if the first falls on a weekend or holiday. As proof of compliance with this requirement, OSFA will accept the following:

a. a certificate of mailing, registered, certified, certified/return receipt requested, priority or overnight mail receipt from the United States Postal Service, or other authorized mail carriers such as United Parcel Service and Federal Express, which is dated prior to March 16;

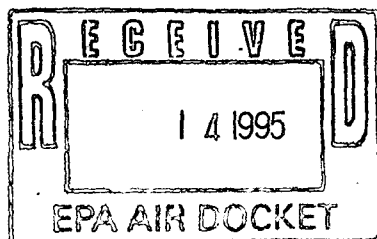
b. ESAR record indicates that the original application was received by the processor by April 1;

c. verbal or written verification, by federal processor staff to OSFA staff, that the original application was received by the processor by April 1;

d. other forms of verification, including notarized or certified statements, will not be accepted as proof of compliance with the deadline requirement."

Jack L. Guinn
Executive Director

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The Banking Rule is part of the Contingency Measures for the 15 percent VOC Reduction RFP.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 6. Regulations on Control of Emissions Through the Use of Emission Reduction Credits Banking

§601. Background and Purpose

A. Background

1. *Federal Register*, Vol. 51, No. 233, Thursday, December 4, 1986, contained EPA's Emissions Trading Policy Statement; General Principles for Creation, Banking and Use of Emission Reduction Credits. This Policy Statement replaced the original bubble policy (44 FR 71779, December 11, 1979) and describes emissions trading and sets out general principles EPA will use to evaluate emissions trades under the Clean Air Act and applicable federal regulations. Emissions trading includes bubbles, netting, and offsets as well as banking (storage) of emission reduction credits (ERC) for future use. These alternatives do not alter overall air quality requirements; they give states and industry more flexibility to meet those requirements. EPA endorses emissions trading and encourages its sound use by states and industry to help meet the goals of the Clean Air Act more quickly and inexpensively. This regulation does not alter new source review requirements nor exempt owners or operators of stationary sources from compliance with applicable preconstruction permit regulations in accord with 40 CFR 51.18, 51.24, 51.307, 52.21, 52.24, 52.27, and 52.28. Interested parties should, however, be aware that bubble trades are not subject to preconstruction review or regulations where these trades do not involve construction, reconstruction, or modification of source within the meaning of those terms in the regulations listed above.

2. *Federal Register*, Vol. 58, No. 34, Tuesday, February 23, 1993, sets forth proposed Economic Incentive Program (EIP) Rules. Pursuant to sections 182(g)(3), 182(g)(5), 187(d)(3), and 187(g) of the 1990 Clean Air Act Amendments (CAAA), the use of EIPs is mandated for ozone nonattainment areas classified as severe or extreme. It is optional in ozone nonattainment areas classified as marginal, moderate, or serious. EIPs, or ERCs also serve to demonstrate that the state can meet certain emission reduction milestones required in the 15 percent VOC Reduction Reasonable Further Progress (RFP) Plan for Ozone Nonattainment Areas.

3. An Emission Reductions Credits Program has been identified as a contingency measure for Louisiana's 15 percent VOC Reduction RFP Plan. As such, sources are prohibited from withdrawing any ERCs below the amount claimed by the LDEQ in its three percent contingency measure.

B. Purpose

1. This rule establishes the means of enabling sources to identify and preserve or acquire emission reductions for NSR offsets as well as for use in netting purposes. The pollutants to which this rule applies are nitrogen oxides (NO_x) and volatile organic compounds (VOC). Interpollutant trading, for example, using a NO_x credit to offset a VOC emission, is not allowed.

2. Act 570 of the 1993 Regular Legislative Session mandates the enactment of rules, by September 1, 1994, that provide for a vehicle scrappage program within the serious nonattainment area in exchange for emission reduction credits, banking, and trading criteria established by rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20: (August 1994).

§603. Applicability

The only geographical areas in which eligible sources may participate in the emissions banking program are the federally designated ozone nonattainment areas. The following sources are eligible to participate in the emissions banking program for a designated ozone nonattainment area: any stationary point source, any area source, and any mobile source registered in the designated ozone nonattainment area. The rule shall apply to the following pollutants: NO_x and VOC. Other sources in areas being redesignated ozone attainment may participate in the emissions banking program on a voluntary basis.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20: (August 1994).

§605. Definitions

The terms used in this Chapter are defined in LAC 33:III.111 of these regulations except as defined within the separate Subchapters or as follows:

Actual Emissions—the actual rate of emissions of an air contaminant from a source operation, equipment, or control apparatus. Actual emissions shall be calculated using the actual operating hours, production rates, and types of materials used, processed, stored, or combusted during the selected time period. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal major stationary source operation. A different time period shall be allowed upon a determination by the department that it is more representative of normal major stationary source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period. Acceptable methods for estimating the actual emissions may include, but are not limited to, any one or a combination of the following:

a. emission factors based on EPA's Compilation of Air Pollutant Emission Factors (AP-42) or other emission factors approved by the department, if better source specific data is not available;

b. fuel usage records, production records, purchase records, material balances, engineering calculations (approved by the assistant secretary, Office of Air Quality and Radiation Protection), source tests (only if suitable emission factors are not available), waste disposal records, emission reports previously submitted to the department such as emission inventory reports, SARA Title III, or MACT compliance

certifications, and other methods specifically approved by the administrative authority.

Air Contaminant—any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors, or gases.

Allowable Emission/Potential to Emit—the rate at which an air contaminant may be emitted into the outdoor atmosphere. This rate shall be based on the maximum rated capacity of the equipment and 8760 hours per year of operation, unless the equipment is subject to federally enforceable limits which restrict the operating rate, hours of operations, or both. In such cases this rate is based on the most stringent of the following:

- a. applicable national standards of performance for new stationary sources (NSPS) as set forth in 40 CFR Part 60;
- b. applicable national emission standards for hazardous air pollutants (NESHAP) as set forth in 40 CFR Part 61;
- c. applicable emission, equipment, and operating standards as set forth in this Chapter, including those with a future compliance date;
- d. applicable emission limitations specified in a federally enforceable permit, including limitations (best available control technology [BACT] and lowest achievable emission rate [LAER] requirements) with a future compliance date;
- e. any emission limitation in an applicable state implementation plan (SIP); and
- f. applicable acid rain SO_2 and NO_x control requirements as defined under Title IV of the 1990 Clean Air Act Amendments and subsequent regulations.

Alter—to effect an alteration of equipment or control apparatus.

Alternative Fuel—with respect to any source operation, any fuel whose use is not authorized by any permit or, for a source operation without a permit, any fuel not used in the source operation since December 31, 1976.

Bankable Emission Reductions—emission reductions of pollutants and their precursors for which ambient air quality standards exist and which meet the provisions of this rule. Such reductions may be deposited in the ERC bank. Once banked and certified, the emission reductions become ERCs.

Bank—the repository for ERCs and includes the ERC banking register/database.

Bank Balance Sheet—the form that is completed and submitted along with supporting information to the department to request recognition and certification of potentially bankable emission reductions. A banking application is submitted by the owner(s) of the source creating bankable emission reductions or the owner's designated representative.

Banking—a system for quantifying, recording, storing, and preserving ERCs so that they may be used or transferred for use at a future date.

Banking Register/Database—the document/database that records all ERC deposits, withdrawals, transfers, and transactions.

Baseline—that level of emissions below which any additional reductions may be counted (credited) for use in trades.

Baseline Emission Level—the quantity of emissions during the defined baseline period that is used in calculating ERCs.

Baseline Period—the period of time over which the historical emissions of a source are averaged. This period shall be a time period of at least two consecutive years within the five years immediately preceding the date the emission reduction occurred that is determined by the department to be representative of normal source operation. The baseline period may be determined on either a calendar year or consecutive 12-month or consecutive 365-day basis.

Bubble—an alternative emission control plan where two or more existing emission points are regarded as being placed under a hypothetical dome, which is then regarded as a single emission point. Stationary sources under a bubble may reallocate emission decreases and increases, so long as the net effect results in the same or better ambient air quality and the same or less air emissions. Bubbles need not be confined to a single stationary source. Bubbles must meet all the requirements contained in the Federal Emissions Trading Policy Statement (51 FR 43814, December 4, 1986) or other applicable regulations.

Criteria Pollutant—ozone (O_3), PM-10, sulfur oxides measured as sulfur dioxide (SO_2), nitrogen oxides (NO_x), volatile organic compounds (VOC) measured as nonmethane hydrocarbons, carbon monoxide (CO), or lead (Pb), or any other air contaminant for which national ambient air quality standards have been adopted.

Emissions Averaging—defined in section 112(d) of the 1990 CAAA; involves the reduction of hazardous air pollutants within a facility by at least as much as would otherwise occur if the source were controlled point by point.

Emission Offset—a legally enforceable reduction, approved by the department, in the rate of actual emissions from an existing facility, which reduction is used to offset the increase in allowable emissions of air contaminants from a new or altered facility.

Emission Reductions—the decreases in emissions associated with a physical change or change in the method of operation at a facility.

Emission Reduction Credit—an emission reduction certified by the administrative authority in accordance with the requirements of the current regulations that represents a decrease in the quantity of a pollutant discharged from a source. To be valid, emission reduction credits must be surplus, enforceable, permanent, and quantifiable.

Emission Reduction Credit Certificate—a document certifying title to a defined quantity and type of ERCs issued by the department to the owner(s) identified on the certificate.

Enforceable—each transaction that revises any emission limit must be approved by the state and be federally enforceable. Means of making emission limits federally enforceable include SIP revisions, EPA-approved generic emissions trading regulations, and permits issued by states under EPA-approved SIP regulations, as well as permits issued by EPA or by states under delegation. ERCs due to trading activities should be incorporated in an enforceable compliance instrument which requires recordkeeping based on the averaging period of the emission limit, so that compliance may easily be determined for any single averaging period.

Equipment—any device capable of causing the emission of an air contaminant into the open air and any stack, chimney,

conduit, flue, duct, vent or similar device connected or attached to or serving the equipment.

Facility—the combination of all structures, buildings, equipment, and other operations located on one or more contiguous or adjacent properties owned or operated by the same person.

Federally Enforceable—as applied to emission reductions, all limitations and conditions which are enforceable by the U. S. EPA administrator, including the following:

a. requirements contained in 40 CFR Parts 60 and 61 (New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants);

b. requirements within any applicable SIP;

c. any requirements contained in permits issued pursuant to 40 CFR 52.21 (Prevention of Significant Deterioration) or comparable state regulation (LAC 33:III.509);

d. any requirement contained in permits issued pursuant to 40 CFR 52.24 (Nonattainment New Source Review) or comparable state regulation (LAC 33:III.504);

e. requirements contained in operating permits issued pursuant to Louisiana permitting programs approved by EPA as meeting the requirements of Title V of the 1990 Clean Air Act Amendments; and

f. requirements contained in a Louisiana regulation, a Louisiana operating permit, or a Louisiana-issued enforcement instrument which is submitted to EPA and approved as a source-specific SIP revision. ERCs must be federally enforceable before they are allowed as banked emissions credits.

Fugitive Emissions—any emissions of an air contaminant into the open air which do not pass through any stack or chimney.

Hazardous Air Pollutant Offset—the use of an ERC, which is equal or greater in quantity, and which is considered to be more hazardous, to compensate for emission increases of a hazardous air pollutant from a source to avoid being considered a modification according to the requirements of section 112(g) of the 1990 CAAA.

Minimum Offset Ratio—the minimum acceptable ratio of emission offsets from an existing facility to increases in allowable emissions from a new or altered facility.

Mobile Emission Reduction Credits (MERCs)—real, quantified emission reductions generated by a mobile source, approved by the department.

Netting—use of an ERC created at an existing facility to compensate for emission increases associated with a proposed modification at the same facility and to, thus, avoid the requirements of new source review. ERCs used for netting are always internal to the source seeking credit.

Nonpermitted Emissions—those emissions of an air pollutant into open air from nonpermitted emission sources that are not required to have air pollution permits. Nonpermitted emissions may include emissions from mobile sources, exempt equipment, and "grandfathered" sources that were never required to be permitted under the state's new source review rule.

Offset—use of an ERC obtained from an existing source or emissions unit to compensate for the increase in emissions

from a new or modified source or emissions unit in a nonattainment area in order to ensure that reasonable further progress is maintained. ERCs used for offsetting may be either internal or external to the source seeking credit but must meet the requirements specified in Section 182 of the 1990 Clean Air Act Amendments.

Permanent—a reduction shall be guaranteed through an enforceable permit limitation confirming the amount and duration of the decrease or other enforceable mechanism including, but not limited to, permanently dismantling the emissions unit or surrendering the permit. The department may consider an emission reduction whose quantity varies with time to be permanent by converting it to an annual equivalent emission reduction. Only permanent reductions in emissions can qualify for credit.

Quantifiable—in reference to emission reductions, the amount, rate, and characteristics of the emission reduction can be estimated through a reliable method. Quantification may be based on emission factors, stack tests, monitored values, operating rates and averaging times, process parameters, production inputs, modeling, or other reasonable measurement practices. The same method of calculating emissions should generally be used to quantify emission levels both before and after the reduction.

Reasonable Further Progress—annual incremental reductions in emissions of a given air pollutant (including substantial reductions in the early years following approval or promulgation of a SIP and regular reductions thereafter) that are sufficient in the judgment of the U.S. EPA to provide for attainment of the applicable ambient air quality standard within a specified nonattainment area by the attainment date prescribed in the SIP for such area.

Scrapping—the process by which a motor vehicle is permanently removed from service.

Shutdown—the cessation or permanent curtailment of operations or emissions. The date of the emission reduction created by the shutdown is the date of the last actual emissions from the source.

Shutdown Credits—credits resulting from the shutdown of a source.

Stack or Chimney—a flue, pipe, tube, conduit, channel or opening designed and constructed for the purpose of emitting air contaminants into the outdoor air.

Surplus Emission Reductions—emission reductions that are voluntarily created for an emissions unit and have not been required by any local, state, or federal law, regulation, order, or requirement and are in excess of reductions used to demonstrate attainment of federal and state ambient air quality standards.

Transfer—the conveyance of an ERC from one entity to another. All "banking" transactions shall be recorded in the ERC banking register/database and shown as debits and credits for the appropriate entity(ies).

Unpermitted Sources—those sources which emit air pollutants into the ambient air and which are not required to have air permits. Unpermitted sources may include, but are not limited to, mobile sources, area sources, and small sources not required to obtain air permits.

Vehicle Scrapage Program—a program in which old vehicles are scrapped in exchange for MERCs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20: (August 1994).

§607. Stationary Point Source Emission Reductions

A. Pollutants

1. Reductions in the following types of air emissions are eligible for banking pursuant to this rule:

- a. volatile organic compounds (VOCs) in marginal or above ozone nonattainment areas; and
- b. nitrogen oxides (NO_x) in moderate or above ozone nonattainment areas.

2. The applicant may choose to speciate the pollutants according to individual compounds upon application to bank the ERCs.

B. Eligible Sources. Sources that may create and bank emission reductions include, but are not limited to, the following permitted and unpermitted source types, regardless of the size of the source or the level of emissions:

1. stationary sources, including point sources, fugitive emission sources, and off-shore sources;
2. mobile sources, including on-road and off-road sources and marine vessels; and
3. area and indirect sources, including nonpoint sources and agricultural sources.

C. Acceptable Methods of Creation. Methods of reducing emissions to receive credit under this rule include, but are not limited to the following:

1. enforceable installation of add-on control equipment (an actual emission reduction resulting from the installation of a level of control greater than that which is required by regulation, permit, or SIP provision if the applicant accepts a permit provision specifying a lower level of emissions);
2. enforceable change in process(es);
3. enforceable change in process inputs, formulations, products or product mix, or raw materials (an actual emission reduction resulting from more effective operation and maintenance of abatement and process equipment if the applicant accepts a permit provision specifying a lower level of emission);
4. enforceable reduction in actual emission rate(s);
5. enforceable shutdown of emitting units or facilities (an actual emission reduction resulting from a permanent shutdown of equipment after January 1, 1990, and which causes a loss of capability to produce emissions that were reported in the 1990 or later emissions inventory);
6. enforceable production curtailment(s);
7. enforceable reductions in operating hours;
8. other enforceable methods that might be applicable to eligible source types; and
9. enforceable reduction in emissions from area and mobile source types.

D. Timing of the Emission Reduction. In order to be eligible for banking, emission reductions must occur after December 31, 1989. Creditable emission reductions made prior to December 31, 1989, are not eligible for banking and can only be used for netting.

E. Geographic Areas. Each bank is limited to a designated nonattainment area and separate accounts shall be maintained for NO_x and VOCs.

F. Criteria for ERC Approval

1. Emission reductions shall be recognized as ERCs only after the approval of the department has been obtained. The department shall certify emission reductions as ERCs that are determined to be:

- a. surplus;
- b. permanent;
- c. quantifiable; and
- d. enforceable.

2. Removal of Emission Reduction Credits either for use by a facility or to meet the 15 percent VOC RFP Plan (Section 182 (b)(1)(A) of the CAAA) will be done in accordance with Section 621.

G. Procedures for Calculating the Emission Reduction. The following procedures shall be used in calculating the quantity of creditable air emission reductions:

1. define the baseline period. The applicant shall first determine the two-year baseline period, as defined in LAC 33:III.605, over which the emission reductions are to be calculated;

2. quantify baseline emissions. The baseline emissions shall be calculated by determining the actual emissions during each year of the baseline period. The actual emissions for each year of the baseline period shall be averaged to determine the average baseline emission level;

3. calculate allowable future emissions. The applicant shall calculate the allowable future emissions for the source. The allowable emissions shall be based on the maximum emissions capacity of the source except that physical and operational limitations, including air pollution control equipment, restrictions on hours of operation or the type of material combusted, stored, or processed or other emission restrictions that will be included in a federally enforceable air permit or applicable rules and regulations may be considered in calculating the allowable future emissions; and

4. calculate the emission reduction credit. The ERC shall be calculated by subtracting the allowable future emissions from the baseline emission level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20: (August 1994).

§609. Area Source Emission Reductions - Reserved

§611. Mobile Sources Emission Reductions - Reserved

§613. ERC Bank Balance Sheet

A. ERC Bank Balance Sheet. For each applicable pollutant (VOC and NO_x), each owner or operator shall maintain an ERC Bank Balance Sheet which shall include the minimum information of company name, physical location, pollutant, date of latest transaction, permit numbers affected, date of ERC transaction, date of emissions increase/decrease, ERCs deposited (TPY), ERCs relied upon for netting (TPY) ERCs used for offsets (TPY), ERCs available for netting (TPY) and ERCs available for offsets (TPY).

B. Netting and Offsets. In order to keep track of all transactions and the ERC balances and to prevent an ERC

from being used for both netting and offsets, the following procedures shall be followed:

1. each ERC that is created is assigned an item number;
2. each transaction is shown on a separate line under the appropriate item number;
3. ERCs that are relied upon for netting are deducted from the balance available for offsets but not from the balance available for netting (since all emission increases and decreases are included in the contemporaneous period); and
4. ERCs that are used for internal or external offsets are deducted from both balances.

C. **Recordkeeping Requirements.** Each owner or operator shall maintain records on all ERCs deposited in the ERC banking database. This information shall be available, upon request, for inspection by the administrative authority. The records shall be maintained for the life of the ERC and shall include the minimum information: permit number, date permit issued, date of start-up of the increase/decrease, emissions (actual) before the start-up (TPY), emissions (allowable) after the project (TPY), emission change for the project, creditable increases/decreases (TPY), brief description of project, and creditability of project. Creditability of projects shall be defined by all applicable regulations (RACT, NSPS, etc.), emissions before the project (baseline period, hours/year average, percentage of capacity, fuel usage), and emissions after the project (lower of potential or allowable emissions).

D. **Schedule.** All applications for banking ERCs where the emission reductions occurred prior to the date this banking rule was adopted shall be submitted within six months after the date of promulgation of the final rule. All applications for banking ERCs where the emission reductions occurred after the date this banking rule was adopted shall be submitted on March 1 following the year in which the reduction occurred. The larger of the two balances (i.e., the balance available for netting or the balance available for offsets) from the ERC Bank Balance Sheets of Subsection A of this Section shall be submitted to the department on March 1 of each year together with the certification specified in Subsection E of this Section. All emission reductions must meet the timing restrictions set forth in LAC 33:III.607.D in order to be eligible for banking as ERCs.

E. **Certification.** A certifying statement is to be signed by the owner(s) or operator(s) and shall accompany each ERC bank balance that is submitted to attest that the information contained in the balance is true and accurate to the best knowledge of the certifying official. The certification shall include the full name, title, signature, date of signature, and telephone number of the certifying official.

F. **Inclusion of ERC Bank in the Emissions Inventory.** The administrative authority shall be responsible for including the banked ERCs in the current emissions inventory so that the credits are considered to be "in the air" for air quality planning purposes. Any failure by the regulatory agency to fulfill this responsibility shall not affect the validity of the ERCs in any manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20: (August 1994).

§615. Schedule for Submitting Applications

A. All bank balance sheets for banking emission reductions where the emission reductions occurred after adoption of the final rule shall be submitted on March 1 following the year in which the reductions occurred. Thereafter, the bank balance and the applicant's certification should be submitted annually on March 1.

B. All bank balance sheets for banking emission reductions where the emission reductions occurred prior to adoption of the final rule shall be submitted within six months after adoption of the final rule. Thereafter, the bank balance and the applicant's certification should be submitted annually on March 1.

C. Owner(s) or operator(s) of major sources in nonattainment areas with VOC or NO_x emission reductions not identified through the process described in Subsection B of this Section will be confiscated. A notification of confiscation will be sent by the department at such time that a permit modification or renewal is submitted using "unbanked" VOC or NO_x emission reductions described in Subsection B of this Section as offsets or for netting purposes.

D. Bank balance sheets for banking emission reductions which are to be made as part of a project which includes an increase of emissions and for which the reduction will serve to net out or offset the increase may be submitted as part of the permit application for the proposed increase. Such reductions will be reviewed for applicability as an ERC concurrently with the review of the permit application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20: (August 1994).

§617. Review and Approval of ERC Bank Balance Sheets

A. **Determination of a Complete Application.** An ERC bank balance sheet shall be deemed complete when the department has determined that sufficient information is available to evaluate the ERC bank balance sheet. The department shall determine whether an ERC 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 owner(s) or operator(s) and the department. Upon determination that the application is complete, the department shall notify the owner(s) or operator(s) in writing.

B. **Submittal of Additional Information.** If the department determines that the bank balance sheet is not complete, the owner(s) or operator(s) shall be notified in writing of the decision, specifying the additional information that is required. The owner(s) or operator(s) shall have 90 days to submit the requested information. Upon receipt of all requested information, the department shall have 30 days to determine whether the application is complete. If no data is submitted or the application is still incomplete, the department may cancel the ERC bank balance sheet with written notification to the owner(s) or operator(s). Upon determination that the

application is complete, the department shall notify the owner(s) or operator(s) in writing.

C. Preliminary Decision on the Approval or Disapproval of the Bank Balance Sheet. Upon determining that a bank balance sheet is complete, the department shall have 60 days to perform an initial assessment of the bank balance sheet and render a preliminary decision as to whether to approve or to disapprove the ERC. Upon completion of this initial assessment, the department shall provide written notice of such preliminary decision to the owner(s) or operator(s) and the public. The public notice shall include the name and address of the applicant; the proposed quantity and type of emission reductions to be approved or disapproved; an explanation of the department's initial assessment; the opportunity and time periods to submit written public comments concerning the application; and the name and address of the person to whom public comments and requests for public hearings should be sent. A period of 30 days after the date of publication will be allowed for owner or operator and public comment. The department's preliminary decision relates only to the banking of the emission reductions and not to the use of the ERCs.

D. Issuance of ERC Certificate. Upon conclusion of the 30 day owner(s)' or operator(s)' comment period provided for, the department shall have 30 days to render a decision as to whether the department approves, conditionally approves, or disapproves the application. This decision shall be promptly delivered in writing by registered mail to the owner(s) or operator(s). If the department decides to approve the ERC bank balance sheet application, the department shall issue an ERC certificate to the owner(s) or operator(s). A copy of the ERC certificate shall be retained by the department, and the original shall be delivered to the owner(s) or operator(s). Delivery by the department of the ERC certificate to owner(s) or operator(s) shall be accomplished by registered mail. The issued ERC certificate shall be recorded in the banking register/database.

E. Appeals. The owner(s) or operator(s) may appeal the department's decision following provisions specified in R.S. 30:2024.

F. Cancellation of ERC Bank Balance Sheet. Withdrawal of a bank balance sheet by an owner or operator shall result in the cancellation of the bank balance sheet. If an owner or operator resubmits the application, the application shall be treated as a new application, and the review and approval process will start over as if the applicant had submitted the bank balance sheet for the first time.

G. Governing Rules. ERC bank balance sheets shall be reviewed in accord with federal and state rules in effect at the time of the submittal of the ERC bank balance sheet.

H. Request for Recalculation of ERCs. Anytime after the original ERC application is submitted, the applicant may request the recalculation of the ERCs for the purpose of using alternative baseline emissions, an alternative baseline period or availability of more accurate emissions data (i.e., performance test data, etc.). The review and approval of this recalculation request shall follow the same schedule as set forth in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20: (August 1994).

§619. Registration of Emission Reduction Credit Certificates

A. Banking Register/Database. The department shall maintain a banking register/database that shall consist of a record of all information concerning titles, interest, and other matters such as liens, encumbrances, changes of records, deposits, withdrawals, and transactions, as well as pertinent date(s) concerning such information. All data in the banking register/database shall be available to the public upon request. It is the goal of the department to establish a computerized database which will allow the public to ascertain the amount of reductions which are registered or banked in each designated ozone nonattainment area. In lieu of a computerized database, a paper copy of the amount of reductions that are registered or banked will be available at the department.

B. ERC Certificates. Certificates will be issued at the point of trade. A record of each ERC certificate issued shall be retained by the department. Each ERC certificate shall contain, at minimum:

1. be numbered consecutively;
2. bear the date of issuance;
3. be signed by the assistant secretary of the Office of Air Quality and Radiation Protection;
4. bear the seal of the state;
5. include the owner(s) name(s), address(es), and phone number(s);
6. state the address where the emission reduction occurred;
7. indicate the method of ERC creation;
8. show the quantity of the ERC and type of pollutant; and
9. show when the emission reduction occurred.

C. Multiple ERC Certificates and Multiple Ownership. Single or multiple ERC certificates may be issued. At the owner(s) or operator(s) request, multiple ERC certificates shall be issued for each owner's proportional share.

D. Duplicate Copy of the ERC Certificate. The department may reissue a lost, mutilated, or destroyed ERC certificate after the ERC certificate title bearer vouches that the original has been lost, mutilated, or destroyed. The word Duplicate, will appear on the reissued certificate.

E. Inclusion of ERC Bank in the Emissions Inventory. The department shall be responsible for including the banked ERCs in the current emissions inventory so that the credits are considered to be "in the air" for air quality planning purposes. Any failure by the department to fulfill this responsibility shall not affect the validity of the ERCs in any manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20: (August 1994).

§621. Protection of Banked ERCs

A. ERCs are valid for 10 years from the date of certificate issuance by the department. ERCs can be used for netting only during the contemporaneous period as specified in LAC

33:III.504, but they can be used for internal or external offsets (with the appropriate offset ratio) for their entire life.

B. ERCs may be used by the ERC certificate owner(s) or operator(s) or by any entity to whom the ERC certificate has been transferred, except that the department may reduce the quantity of ERCs under the following circumstances:

1. Adjustments for Attainment Planning Purposes. The department will maintain a bank balance (of VOC reductions which have not been designated for either netting or offset purposes) sufficient to demonstrate the commitments made in the reasonable further progress plan which may be a reduction identified to satisfy the 15 percent VOC Reasonable Further Progress Plan or the contingency measures associated with the same plan. The department shall confiscate only those ERCs from the bank that are needed for attainment purposes either as a support to the 15 percent VOC RFP or when a milestone of that plan has been missed. ERCs which have already been used or for which a permit application has been submitted (either for netting or offsetting purposes) shall not be reduced in quantity or confiscated under any circumstance.

2. Prior notification and comment opportunity. The department shall notify the owner(s) of reduction credits, in writing, its plans to confiscate in order to meet the 15 percent VOC RFP or contingency measures. A 30-day comment period will be allowed for the affected facility(ies) to respond to the department's confiscation or to submit an alternative emissions reduction proposal.

3. Refunding of Unused ERCs. If all of the ERCs withheld for the reasonable further progress demonstration are not utilized, then the department shall refund the unused ERCs to the generating sites on a pro rata basis. Refunds will be in a direct proportion to a site's individual contribution to the amount of ERCs withheld for reasonable further progress. The period of time that an ERC was held by the department will not count toward the contemporaneous period for netting nor the ten-year life for offsetting purposes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20: (August 1994).

§623. Withdrawal, Use, and Transfer of Emission Reduction Credits

A. Withdrawal of ERCs. An ERC certificate may be withdrawn in whole or in part. The ERC owner must submit a written request to withdraw and use the ERCs. The assistant secretary of the Office of Air Quality and Radiation Protection shall have 30 calendar days to review the request. Upon such request to withdraw ERCs from the bank, the department shall be responsible for recalculating the quantity of available ERCs for that entity and for providing that entity with an adjusted bank balance sheet. In the case of a partial withdrawal, the assistant secretary shall issue a new certificate reflecting the available credits remaining.

B. Use of ERCs. ERCs shall be used in accordance with applicable regulations. ERCs may be used anytime after the issuance of an ERC certificate. After the ERC has been used, the ERC owner shall relinquish title to the ERC, and the banking register shall indicate that the ERC has been used. After an ERC is applied to an air permit or a project or

otherwise used, the quantity shall not be changed for any reason. An ERC may be used:

1. to offset increased emissions from new or modified sources in nonattainment or attainment areas in accordance with LAC 33:III.504;

2. for netting under nonattainment new source review or prevention of significant deterioration programs in accordance with LAC 33:III.504 and 509;

3. where allowed, to establish alternative emission limits (which have been approved by both the department and the U.S. EPA; and

4. in another manner deemed appropriate and in accordance with applicable state and federal law.

C. Transfer of ERCs. An ERC certificate may be transferred in whole or in part. The role of the department in the transfer of an ERC certificate shall be limited to providing information to the public, documenting ERC transfers, and registering ERC certificates. The assistant secretary of the Office of Air Quality and Radiation Protection shall be notified within 30 days of any transfer of the credit to another party. The old certificate shall be submitted to the assistant secretary who shall then issue a new certificate within 30 days indicating the new owner. In the case of a partial transfer, the assistant secretary shall issue a new certificate to the new owner as well as a revised certificate within 30 days to the current owner reflecting the available credits to each owner. The original ERC certificate shall be canceled. The banking register/database shall indicate the transfer to the new owner (and reduction of credits when a partial transfer takes place) and the invalidation of the original ERC certificate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20: (August 1994).

§625. Application and Processing Fees

Fees will be assessed when the application process does not coincide with a permit application, permit modification, required initial reporting or required annual reporting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 20: (August 1994).

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calculates to be 157.68 TPY (at 8760 hours per year), yet the annual rate for this emission point is listed as 36.4 TPY.

Appendix L: Architectural and Industrial Maintenance (AIM) Coatings Committal

In order to be deemed complete, the commitment letter from the Governor needs to include a specific date by which the State AIM rule would be adopted in the event the EPA does not promulgate a national rule by February 1995. Consistent with existing EPA policy, that date should be April 30, 1995.

In order to process the final approval of the Louisiana 15% plan, the Region will require that either the Federal or State AIM rule achieving the claimed reductions be fully adopted and final at that time.

Appendix N: Contingency Reductions Documentation

The LDEQ should review the projected emission reductions to be banked by industry. Based on the Region's initial review of the list, it appears that several of the projects may be ineligible for banking (i.e., they do not fit the definition of "surplus" reductions), or are double counted in the core control measure reductions. The banking rule requires (under the definition of Federally Enforceable), that ". . . ERCs must be federally enforceable before they are allowed as banked emission credits." Therefore, the LDEQ should review the table to ensure that all reductions being claimed are surplus, federally enforceable (via a federally enforceable permit, regulation, etc.), and not double counted in the core control measures for the 15 plan. This verification will ensure the estimate of reductions to be banked is as accurate as possible. (Attachment 2 identifies a number of the reductions in question.)

In order to approve the 15% plan, the LDEQ will need to submit to the EPA detailed documentation showing it has a balance of confiscated emission reduction credits sufficient to meet the contingency measure requirement.

Appendix O. Banking Regulations

§601.A.2 and A.3: The rule says that the banking program is being used to meet 15% ROP requirements (specifically, the 3% contingency measure). (See also §607.F.2, §621.B.1 and 2.) It is the Region's understanding that the LDEQ intends to carry over the 3% contingency measure in the post-1996 period to cover any milestone shortfall(s). In future revisions to the banking rule, the LDEQ may wish to broaden the purpose statement to say "meeting ROP and contingency measure requirements". (This would include emission reduction credits used for core measure reductions credit in the future, if needed.)

§603. The final rule provides that other sources in areas being redesignated ozone attainment may participate in the emissions banking program on a voluntary basis. The Region feels that this provision is redundant with the first sentence that applies the rule to all federally designated ozone nonattainment areas. (Areas undergoing redesignation are officially nonattainment until the redesignation is approved by the EPA.) Therefore, these areas are automatically subject to the same provisions as all other nonattainment areas. The Region suggests that, the applicability be changed to include, say, moderate and above nonattainment areas with the program being voluntary for less than moderate areas. (The rule should also specifically address whether the confiscation provisions apply to voluntary participants.)

§605. The State did not incorporate the EPA's June 3, 1994, comment on the proposed banking rule recommending that 1) the definition of allowable emissions/potential to emit be changed to be consistent with 40 CFR 51.165(a)(1)(iii) and 2) each term be defined separately. In order to approve the rule, this revision will need to be made.

§607.B. In its June 3, 1994, comments on the proposed banking rule, the Region recommended the SIP ensure that the requirements of the EPA's policy on the use of shutdown credits toward NSR offsets and 40 CFR 51.165(a)(3)(ii) are met. The Region does not feel that the State adequately addressed this issue in its response to the comment which states "the rule clearly defines eligible sources and acceptable methods of creation, none of which offer shutdown credits". First, the rule says that the methods or reducing emissions to receive credit under this rule include, but are not limited to the following. . . ." Moreover, method number 5 on the list of acceptable methods of creation in §607.C. is actually the "enforceable shutdown of emitting units or facilities". Therefore, the Region feels these requirements need to be referenced in order to approve the the 15% plan.

§615.C. The first sentence has a grammatical (agreement) error. For clarity, the sentence should be revised to read, "Owner(s) or operators(s) of major sources in nonattainment areas with VOC or NOx emission reductions not identified through the process described in Subsection B of this Section will have their reductions confiscated."

§621.A. - Netting

The Region would like to reiterate its June 3, 1994, comment that ERCs can be used for netting only if that ERC was generated within the same source which proposes an increase in emissions. (Section 623.B.2. of the banking rule does requires that using ERCs for netting under under nonattainment new source review or

prevention of significant deterioration programs be done in accordance with LAC 33:III.504 and 509.)

(Former) §621.B.1. - Adjustments for New Emission Reduction Requirements

In the final rule, the State has deleted the requirement that ". . . if a new or revised State or Federal regulation is adopted that will or would require all or a portion of the emission reductions which comprise the ERC, the statute mandates that portion of the emission reduction covered by the new requirements cannot be considered and therefore cannot be used as an ERC. The quantity of ERCs shall be adjusted accordingly to account for new and revised emission reduction requirements in effect at the time of submission of the bank balance sheet to withdraw and use the ERCs."

ERCs must be reductions that are surplus to all applicable regulations at the time the ERC is used, not just at the time the ERC is deposited into the bank. The Region bases its position on the following:

1. Section 173(c)(2) of the Clean Air Act as amended in 1990, which states that, "Emission reductions otherwise required by this Act shall not be creditable as emission reductions for the purposes of any such offset requirements. Incidental emission reductions which are not otherwise required by this Act shall be creditable as emission reductions for such purposes if such reductions meet the requirements of paragraph (1)."
2. 40 CFR §51.165(a)(3)(i). Provides that the baseline for determining credit for emissions reductions is the limit under the applicable SIP. This indicates that reductions which are required to comply with the SIP are not creditable. Emissions reductions are creditable only to the extent that they are greater than required to meet the SIP.
3. 40 CFR 51.165(a)(vi)(E)(1), 51.166(b)(3)(vi), and 52.21(b)(3)(vi). These citations are part of the definition of the term "net emissions increase" which defines the amount of a decrease which is creditable for netting. In each case the creditable decrease is defined as follows:

A decrease in actual emissions is creditable only to the extent that the old level actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of allowable emissions.

The term allowable emissions is defined in 40 CFR 51.165(a)() () () , 51.166(b)() () () , and 52.21 as the emissions that a source would meet at its maximum rated capacity (unless

restricted by federally enforceable limits on operation and production) and the most stringent of the following:

1. applicable provisions of 40 CFR Parts 60 and 61,
2. applicable SIP,
3. emission rates specified in a federally enforceable permit condition.

In the Region's opinion, these citations demonstrate that ERCs must be surplus, or in excess of what is otherwise required by the Clean Air Act (CAA) and the regulations promulgated pursuant thereto at the time they are used. Therefore, in order to approve the plan, the rule will need to be revised accordingly.

§621(B)(3) - Protection of Banked ERCs

This provision allows unused ERCs which were previously confiscated will be refunded to the generating sites. The regulation further provides that "[t]he period of time that an ERC was held by the Department will not count toward the contemporaneous period for netting nor the ten-year life for offsetting purposes."

This provision will effectively extend the contemporaneous period for contemporaneous netting for PSD and nonattainment permits. This could give sources an undue advantage by being able to extend the life of a credit and thus facilitate netting out of review by using a reduction that would have otherwise been not creditable by being outside the contemporaneous window. The Region has three comments that should be addressed by the LDEQ:

1. The nonattainment NSR (NNSR) and PSD permitting regulations should be revised to recognize that their contemporaneous windows can be extended by refunding unused ERCs.
2. If the State proceeds to allow the contemporaneous window to be extended for unused and refunded ERCs, the PSD and NNSR regulations should further provide that during the period that such contemporaneous window is extended, the source should also include all creditable increases during the contemporaneous period, as extended.
3. The State should also demonstrate that an extension of the contemporaneous period for use of refunded ERCs will continue to be as stringent as, or more stringent than, using the contemporaneous periods as defined in the NNSR and PSD regulations.