NOTICE OF INTENT

Department of Environmental Quality

Office of the Secretary

Legal Division

Emmission Reduction Credits (ERC) from Mobile Sources

(LAC 33:III.603, 605, 606, 607, 611, 617 and 619) (AQ365)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.603, 605, 606, 607, 611, 617 and 619 (AQ365).

LAC 33:III.Chapter 6 currently limits participation in the Emission Reduction Credit (ERC) Banking Program to stationary point sources. “Stationary point source” is defined as “any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the Clean Air Act.” Stationary point sources include fugitive emissions, but exclude mobile sources such as cars, trucks, motorcycles, marine vessels, locomotives, and nonroad engines. This rulemaking will allow creditable (i.e., surplus, permanent, quantifiable, and enforceable) reductions from certain mobile sources to qualify as ERC.

This rulemaking will also clarify that minor sources eligible to participate in the ERC Banking Program must have been operating under an air permit and subject to the emissions inventory reporting requirements of LAC 33:III.919 during the baseline period.On October 1, 2015, the Environmental Protection Agency (EPA) lowered the 8-hour national ambient air quality standard (NAAQS) for ozone to 0.070 parts per million (i.e., 70 parts per billion). EPA will designate areas as attainment, nonattainment, or unclassifiable with respect to the new standard in late 2017 based on 2014 – 2016 air quality data.

Based on current design values (2013 through 2015), Baton Rouge would be designated as a marginal nonattainment area. In addition, New Orleans has a design value of 70 ppb and could potentially fall out of compliance with the new standard before designations are made.

In order to encourage broad reductions in NOX and VOC emissions that will be needed to comply with the revised ozone NAAQS, LDEQ will amend Chapter 6 to allow creditable reductions from certain mobile sources to qualify as ERC and therefore be used as offsets under the nonattainment new source review (NNSR) program, LAC 33:III.504.

In order to construct a new major stationary source or major modification in an ozone nonattainment area, federal and state regulations require the owner or operator to offset significant increases in NOX and VOC emissions resulting from the new source or modification. If the necessary offsets cannot be secured, a permit for the project cannot be issued. Therefore, expanding the source types from which ERC can be generated may also serve to facilitate economic growth. The basis and rationale for this rule are to allow creditable NOX and VOC reductions from certain mobile sources to qualify as ERC and therefore be used as offsets for NNSR purposes. This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

This Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

This Rule has no known impact on poverty as described in R.S. 49:973.

This Rule has no known impact on providers as described in HCR 170 of 2014.

A public hearing will be held on September 28, 2016, at 1:30 p.m. in the Galvez Building, Natchez Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Deidra Johnson at the address given below or at (225) 219-3985. Two hours of free parking are allowed in the Galvez Garage with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ365. Such comments must be received no later than October 5, 2016, at 4:30 p.m., and should be sent to Deidra Johnson, Attorney Supervisor, Office of the Secretary, Legal Division, P.O. Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-4068 or by e-mail to deidra.johnson@la.gov. Copies of these proposed regulations can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ365. These proposed regulations are available on the Internet at [www.deq.louisiana.gov/portal/tabid/1669/default.aspx](http://www.deq.louisiana.gov/portal/tabid/1669/default.aspx).

These proposed regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 201 Evans Road, Bldg. 4, Suite 420, New Orleans, LA 70123.

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General Counsel

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 6. Regulations on Control of Emissions through the Use of Emission Reduction Credits (ERC) Banking

§603. Applicability

A. Major stationary sources are subject to the provisions of this Chapter for the purpose of utilizing emission reductions as offsets in accordance with LAC 33:III.504. Minor stationary sources located in nonattainment areas may submit ERC applications for purposes of banking, provided the source was operating under an air permit and subject to the emissions inventory reporting requirements of LAC 33:III.919 during the baseline period. Sources located in EPA-designated attainment areas may not participate in the emissions banking program, except as specified in Subsection C of this Section. ~~Any stationary point source at an affected facility is eligible to participate.~~

B. - C. …

D. Eligible Sources. Sources for which emission reduction credits may be created and banked include the following source types:

1. stationary point sources;

2. on-road mobile sources, including cars, trucks, and motorcycles;

3. marine vessels;

4. locomotives; and

5. *nonroad engines* as defined in LAC 33:III.502.A.

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 20:874 (August 1994), amended LR 24:2239 (December 1998), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 41:2320 (November 2015), LR 42:\*\*.

§605. Definitions

A. The terms used in this Chapter are defined in LAC 33:III.111 with the exception of those terms specifically defined as follows.

\* \* \*

*Allowable Emissions—*the emissions rate of a stationary point source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits that restrict the operating rate, hours of operations, or both) and the most stringent of the following:

a. an applicable standard set forth in 40 CFR Part 60, 61, or 63;

b. any applicable state implementation plan (SIP) emission~~s~~ limitation, including those with a future compliance date;

c. applicable emission limitations specified as an enforceable permit condition, including best available control technology (BACT) and lowest achievable emission rate (LAER) requirements, including those with a future compliance date; ~~or~~

d. applicable acid rain SO2 and NOx control requirements as defined under Title IV of the 1990 Clean Air Act Amendments and subsequent regulations~~.~~; or

e. any other applicable emission limitation or standard promulgated by the administrator.

\* \* \*

*Baseline Emissions—*the level of emissions during the baseline period, as calculated in accordance with LAC 33:III.607.~~C.4~~A.3, that occur prior to an emission reduction, considering all limitations required by applicable federal and state regulations, below which any additional reductions may be credited for use as offsets.

*Baseline Period—*the period of time over which the historical emissions of a source are averaged. In general, this period shall be a two-year period that precedes the date of the emission change and that 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.

*Emission Reductions—*the decreases in emissions associated with a physical change or change in the method of operation at, ~~a facility~~or attributed to, an eligible source.

\* \* \*

*Offset—*a legally enforceable reduction, approved by the department, in the rate of actual emissions from an existing ~~stationary point~~eligible source, which is used to compensate for a significant net increase in emissions from a new or modified stationary source in accordance with the requirements of LAC 33:III.504. To be valid, an *offset* must meet the definition of ERC.

\* \* \*

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 20:874 (August 1994), LR 25:1622 (September 1999), LR 26:2448 (November 2000), LR 28:301 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2068 (October 2007), LR 34:1890 (September 2008), LR 37:3221 (November 2011), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 42:\*\*.

§606. Creation of Emission Reduction Credits

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

1. installation of add-on control equipment;

2. change in process(es);

3. 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. shutdown of emission units or stationary sources;

5. production curtailment(s); and

6. reductions in operating hours; and

7. other methods that may be appropriate for on-road mobile sources, marine vessels, locomotives, or nonroad engines as described in LAC 33:III.611.

B. Emission reductions shall be recognized as ERCs only after the approval of the department has been obtained. The department shall approve emission reductions as ERCs that are determined to be surplus, permanent, quantifiable, and enforceable, as defined in LAC 33.III.605.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 42:\*\*.

§607. Determination of Creditable Emission Reductions from Stationary Point Sources

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

~~1. installation of add-on control equipment;~~

~~2. change in process(es);~~

~~3. 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. shutdown of emission units or stationary sources;~~

~~5. production curtailment(s);~~

~~6. reductions in operating hours.~~

~~B. 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 approve emission reductions as ERCs that are determined to be surplus, permanent, quantifiable, and enforceable, as defined in LAC 33.III.605.~~

~~2. Emission reductions may be creditable for use as offsets for up to 10 years from the date of the actual emission reduction to the atmosphere. An ERC is considered to be used for this purpose upon issuance of a permit that relies upon the ERC as offsets.~~

~~C~~A. Procedures for Calculating the Surplus Emission Reduction. The following procedures shall be used in calculating the quantity of surplus air emission reductions.

~~1. Reserved.~~

~~2~~1. Calculate actual emissions during the baseline period.

~~3~~2. Calculate adjusted allowable emissions during the baseline period. Allowable emissions shall be adjusted to account for all new or revised federal or state regulations adopted that will require, or would have required, all or a portion of the emission reductions that comprise the ERC application or ERC (in the case of a partial use of a previously approved ERC) at the time a permit application that relies upon the reductions as offsets is deemed administratively complete.

~~4~~3. Quantify Baseline Emissions. Baseline emissions shall be the lower of actual emissions or adjusted allowable emissions determined in accordance with Paragraph ~~C.3~~A.2 of this Section.

~~5~~4. Calculate allowable emissions after the reductions occurred.

~~6~~5. Calculate the surplus emission reduction by subtracting the allowable emissions after the reduction occurred from the baseline emissions.

~~D~~B. Adjustments for Netting. Emission reductions used in a netting analysis (i.e., to determine the *net emissions increase* as defined in LAC 33:III.504 or 509, as appropriate) that prevented the increase from being considered “significant” are not eligible for use as offsets. The quantity of emission reductions utilized to “net out” shall not be considered creditable.

C. Emission reductions from stationary point sources may be creditable for use as offsets for up to 10 years from the date of the actual emission reduction to the atmosphere. An ERC is considered to be used for this purpose upon issuance of a permit that relies upon the ERC as offsets.

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 20:877 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 25:1622 (September 1999), LR 28:302 (February 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 32:1601 (September 2006), LR 33:2068 (October 2007), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 42:\*\*.

§611. Determination of Creditable Emission Reductions from Mobile Sources

A. Eligibility

1. In order to be eligible for ERCs, the mobile source must be capable of being used or operated for its intended purpose and registered and insured by the owner, if required by applicable law.

2. Eligible emission reduction strategies include:

a. exhaust control technologies in which a pollution control device, such as an oxidation catalyst, is installed in an engine’s exhaust system;

b. remanufacturing systems or kits, which entail the replacement of certain parts of an engine during a rebuild, resulting in reduced emissions;

c. EPA-verified idle reduction projects which involve the installation of a technology or device that reduces unnecessary idling of diesel-fired mobile sources and/or is designed to provide services (e.g., heat, air conditioning, and/or electricity) to such sources that would otherwise require the operation of the main or an auxiliary engine while the mobile source is temporarily parked or remains stationary;

d. engine repowers in which an existing engine is replaced with a newer engine certified to a more stringent set of emission standards, or otherwise powered with an alternative fuel;

e. vehicle or equipment replacements in which an entire vehicle or other eligible source type is replaced with a newer vehicle or similar source certified to a more stringent set of emission standards, or otherwise powered with an alternative fuel;

f. clean alternative fuel conversions in which a mobile source or engine is altered to operate on alternative fuels such as propane, natural gas, alcohol, or electricity. The conversion system must be certified by EPA in order to ensure that the project is exempt from the tampering prohibition in section 203(a) of the Clean Air Act.

B. Procedures for Calculating the Surplus Emission Reduction

1. Calculate Actual Emissions During the Baseline Period. The applicant shall demonstrate, to the satisfaction of the department, a reliable and accurate basis for calculating actual emissions. Such means may include, but are not limited to, EPA-approved emission modeling systems for mobile sources (e.g., MOVES) and EPA-approved test methods.

a. Actual emissions shall not be based on a rate which exceeds the emission standard to which the mobile source is subject or the emission performance standard to which the mobile source is certified, as applicable.

b. Actual emissions shall exclude any emissions realized when the mobile source was operating outside of the ozone nonattainment area during the baseline period.

c. The applicant shall provide sufficient documentation to substantiate the operational locations and utilization rate of the mobile source during the baseline period.

2. Calculate Projected Emissions. Projected emissions shall be based on the highest anticipated annual utilization of the modified or substitute mobile source after the emission reduction strategy has been put in place.

a. Projected emissions shall not be based on a utilization rate less than that realized by the mobile source during the year of the baseline period in which its utilization was higher.

b. Projected emissions shall not exclude periods during which the modified or substitute mobile source is anticipated to operate outside of the ozone nonattainment area.

3. The surplus emission reduction shall be calculated using the following equation:

|  |  |  |
| --- | --- | --- |
| ERC = |  | (Actual Emissions During the Baseline Period - Projected Emissions) |
| 1.2 |

C. Permanent, Quantifiable, and Enforceable

1. The owner or operator shall operate and maintain the modified or substitute mobile source in accordance with the manufacturer’s emission-related operation and maintenance instructions. Records of maintenance activities shall be retained at a location approved by the department and made available for inspection upon request.

2. A substitute mobile source shall be certified to meet applicable federal exhaust and evaporative emission standards. If no federal exhaust emission standards are applicable to the substitute mobile source, the testing requirements of Paragraph C.3 of this Section shall apply.

3. Testing. NOX and VOC emissions from a modified mobile source shall be verified via EPA-approved test methods in accordance with a protocol approved by the department.

a. In the event the emission reduction strategy is applied to a large group of identical or functionally equivalent mobile sources, a subset of the modified or substitute mobile sources may be tested as approved by the department.

b. Testing shall not be required:

i. if the modified mobile source must be recertified with federal exhaust emission standards as a matter of federal law;

ii. if the owner or operator installs a diesel emission reduction technology verified by EPA orthe California Air Resources Board (CARB), provided the percent reduction claimed is not in excess of that recognized by EPA or CARB;

iii. for a modified mobile source, which will be powered by a battery or fuel cell-powered electric motor; or

iv. for any pollutant for which ERCs are not being claimed.

4. If a mobile source is to be taken out of service as part of the emission reduction strategy, the mobile source (or engine associated with the mobile source) shall be rendered permanently inoperable.

a. Acceptable methods to render a mobile source (or engine associated with a mobile source) permanently inoperable include, but are not limited to:

i. scrapping the mobile source or engine using an automobile crusher licensed by the Louisiana Used Motor Vehicle Commission;

ii. making the engine unusable by drilling a hole through all of the cylinder bores on the engine block large enough to prevent its repair (i.e., 3 inches); or

iii. returning the engine to a remanufacturing facility either operated by the original engine manufacturer or authorized by the department. In this case, the remanufacturer of the engine must completely disassemble the engine components for recycling purposes, but may use the old block to build a remanufactured engine with a new serial number.

b. The applicant shall certify in writing and, if requested by the department, provide photographs that verify the mobile source (or engine associated with the mobile source) has been rendered permanently inoperable.

5. Locomotives. If a locomotive is to be taken out of service as part of the emission reduction strategy, the locomotive shall be rendered permanently inoperable as described in Paragraph C.4 of this Section. Alternatively, the department may allow the locomotive to be permanently removed from Louisiana provided the owner can demonstrate to the satisfaction of the department that the unit will not be returned to the state.

D. Prohibitions

1. Emission reductions from mobile sources funded through state or federal programs (e.g., the Diesel Emissions Reduction Act) shall not qualify as ERCs unless specifically allowed by that program.

2. Emission reductions from mobile sources shall not be considered creditable decreases for purposes of determining whether a physical change or change in the method of operation constitutes a *major modification* as defined in LAC 33:III.504 or 509.

E. Emission reductions from mobile sources may be creditable for use as offsets for up to 5 years from the date of the actual emission reduction to the atmosphere. An ERC is considered to be used for this purpose upon issuance of a permit that relies upon the ERC as offsets.

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

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Division, LR 42:\*\*.

§617. Procedures for Review and Approval of ERCs

A. The department’s review and approval of an application for ERCs generally shall be conducted when a request is submitted to use the reductions as offsets. The review shall be conducted in accordance with LAC 33.III.607 or 611, as applicable.

B. …

C. ERC Certificates

1. …

2. Upon issuance of a permit that relies upon the use of approved ERCs as offsets, the department shall be responsible for recalculating the ERC balance for that entity and for providing that entity with an adjusted ERC certificate. In the case of a partial use of an ERC from an emission reduction project, the department shall issue a new certificate reflecting the available credits remaining. If the ERCs were generated from a stationary point source, t~~T~~he remaining ERC(s) shall be reviewed again in accordance with LAC 33:III.607 at the time a request is received to use the remaining portion.

C.3. - E. …

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 20:878 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 28:304 (February 2002), amended by the Office of the Secretary, Legal Division, LR 42:\*\*.

§619. Emission Reduction Credit Bank

A. …

B. ERC Certificates. Certificates shall be issued for approved ERCs. A record of each ERC certificate issued shall be retained by the department. Each ERC certificate shall, at minimum:

1. - 3. …

4. state the name or description of the ~~stationary~~eligible source ~~where~~from which the emission reduction occurred;

B.5. - C. …

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 20:879 (August 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2449 (November 2000), LR 28:305 (February 2002), amended by the Office of the Secretary, Legal Division, LR 38:2767 (November 2012), LR 42:\*\*.