



Internal Management Directive

Subject:		IMD Number:	
Use of Emission Reduction Credits		AQ.00.019	
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Approval:	<i>Signature on file</i> Andrew Ginsburg - Air Quality Administrator		

Intent / Purpose / Statement of Need:

This Internal Management Directive (IMD) describes the procedure the Air Quality Division of DEQ will follow to determine when emission reduction credits (ERCs) established in accordance with OAR chapter 340, division 268 are “used” for a new or modified source that triggers New Source Review (NSR) in nonattainment or maintenance areas. Under the NSR rules (OAR 340-224-0050 and 340-224-0060), these sources are required to install control equipment, obtain offsets and show that a net air quality benefit will be achieved. If the new or modified source uses ERCs to satisfy the offset and net air quality benefit requirements, this IMD defines when DEQ considers the ERCs to be “used” pursuant to division 268. When ERCs are “used” is a significant issue, because if they have not been “used” before the end of the 10 year banking period, the ERCs revert to the source which generated them and become unassigned emissions for purposes of PSEL. In essence, this makes the ERCs unusable by other sources that might want to acquire them to comply with NSR requirements.

Directive to Air Quality Permit Writers:

This directive applies to Air Quality permit writers who are writing NSR permits for sources that use ERCs.

- ERCs may be banked for a 10 year period that follows the actual emission reduction, pursuant to OAR 340-268-0030(2)(a)(A).
- ERCs may be used for netting actions within the source that generated the credit, and for offsets and the Net Air Quality Benefit requirements of the New Source Review program, pursuant to OAR 340-268-0030(3).
- ERCs may be transferred from the source that generated them to another source, pursuant to OAR 340-268-0030(5)(f).
- If ERCs are not “used” by the expiration of the 10 year banking period, the ERCs will revert to the source that generated them and will be treated as unassigned emissions for purposes of the PSEL, as required by OAR 340-268-0030(4)(b). Thus if ERCs are not “used” by the end of the banking period, they may not be used by any source except the source that generated them.
- ERCs are considered “used” when a complete NSR permit application is received by the Department to apply the ERCs to netting actions within the source that generated the credit, or to meet the offset and Net Air Quality Benefit requirements of the New Source Review program in OAR chapter 340, division 224 and OAR 340-225-0090. Although

OAR chapter 340, division 268 does not specifically define the “use” of ERCs, its meaning is clear when viewed in context with OAR 340-225-0090(4). That rule generally requires that emission reductions used as offsets must occur no more than two years before the submission of a complete NSR permit application, but specifically allows ERC banking pursuant to division 268 to extend that period of time. Therefore, ERCs are “used” when submitted with a complete NSR permit application.

- If the complete NSR permit application or NSR permit that is issued based on that application is amended based on changes to the proposed project, the owner or operator may continue to use the original ERCs and any additional ERCs that may become necessary for the project provided that the changes to the project do not result in a change to the two digit Standard Industrial Classification (SIC) code associated with the project and that the ERCs will continue to satisfy the offset and net air quality benefit criteria.
- If changes to the project will result in a change to the two digit SIC associated with the project or the offset and net air quality benefit criteria can no longer be met, the original application must be withdrawn; or if a permit or permit modification has been issued, the permit or permit modification must be terminated.
- If the application is withdrawn or denied, or the permit or permit modification is terminated before the project is constructed, the ERCs are no longer considered used for the project. The availability of the ERCs for subsequent projects is based on the original life of the ERCs as specified in division 268.
 - As an example, ERCs obtained by source B from source A are considered “used” as of the date that the complete NSR permit application for source B is submitted to DEQ. “Used” ERCs are added to source B’s netting basis because it is an NSR action. If the application is later withdrawn or denied, or the permit or permit modification is terminated, then the ERCs are no longer part of source B’s netting basis and they could not be identified as unassigned emissions for source B. If the 10 year banking period has expired, the ERCs could only be applied as unassigned emissions for source A pursuant to OAR 340-268-0030(4)(b).
- Although the ERC banking period expires after 10 years, the ERCs themselves do not immediately expire. For example, pursuant to OAR 340-268-0030(4)(b), ERCs that are not “used” by the expiration of the 10 year banking period will revert to the source that generated them and will be treated as unassigned emissions for purposes of the PSEL, pursuant to OAR 340-222-0045.
- After the ERCs have been “used” by submission of a complete NSR permit application and the permit has been issued, the source must take certain actions or the permit will expire. Pursuant to OAR 340-224-0030(2)(a), the source must commence construction of the new source or modification within 18 months, must not discontinue construction for more than 18 months, and must complete construction within 18 months of the scheduled time. However, that rule also allows the source to request an extension of the NSR permit. DEQ may grant the extension for “good cause.”
- In assessing whether the source has demonstrated “good cause,” permit writers should be cognizant of the fact that ERCs are intended to represent emission reductions that are contemporaneous with the increased emissions of the project to which they are applied as offsets and for meeting the net air quality benefit requirement. Although division 268 allows a 10 year banking period, ERCs are not intended to last indefinitely, and numerous permit extensions should not be used to extend their life indefinitely.

- Whether “good cause” for an extension exists is a case-by-case determination. However, the following are examples of situations that might qualify as good cause for a source failing to commence construction within the 18 month period, depending upon the unique circumstances of the extension request:
 - Waiting for other permits to be issued (e.g., NPDES, EFSC site certificate, etc.);
 - Waiting for the outcome of litigation;
 - Pending regulation (e.g., MACT standard) may affect the viability of the project;
 - Pending legislation may affect the viability of the project; or
 - Financial considerations.
- Before granting an extension for good cause, the permit writer should also consider whether any of the following affect the validity of the permit due to the delay:
 - Evaluation of whether the LAER or BACT determination is still valid;
 - Review of RACT/BACT/LAER Clearinghouse additions during the 18 month period;
 - Review of other permits issued in Oregon for similar sources during the 18 month period;
 - Evaluation of whether the results of the air quality impact analysis, including net air quality benefit determinations, are still valid;
 - Changes to the air quality designation for the area; and
 - Other non-NSR sources constructed in the area that weren’t included in the competing source analysis.

Background:

When a source triggers NSR in a nonattainment or maintenance area, one requirement is to obtain offsets and demonstrate that a net air quality benefit will be achieved. The net air quality benefit rules OAR 340-225-0090(4) state:

The emission reductions used as offsets must be contemporaneous, that is, the reductions must take effect before the time of startup but not more than two years before the submittal of a complete permit application for the new source or modification. This time limitation may be extended through banking, as provided for in OAR 340 division 268, Emission Reduction Credit Banking.

The emission reduction credit banking rules OAR 340-268-0030(2) state:

(a) The life of emission reduction credits may be extended through the banking process as follows:

(A) Emission reduction credits may be banked for ten years from the time of actual emission reduction.

(B) Requests for emission reduction credit banking must be submitted within the 2 year (24 calendar month) contemporaneous time period immediately following the actual emission reduction. (The actual emission reduction occurs when the airshed experiences the reduction in emissions, not when a permit is issued or otherwise changed).

Use of emission reduction credits is regulated under OAR 340-268-0030(3):

(3) Using Emission reduction Credits: Emission reduction credits may be used for:

- (a) *Netting actions within the source that generated the credit, through a permit modification; or*
- (b) *Offsets pursuant to the New Source Review program (OAR 340 division 224) and the Net Air Quality Benefit requirements of OAR 340-225-0090.*
- (4) *Unused Emission Reduction Credits*
- (a) *Emission reduction credits that are not used, and for which the Department does not receive a request for banking within the contemporaneous time period, will become unassigned emissions for purposes of the Plant Site Emission Limit (PSEL).*
- (b) *Emission Reduction credits that are not used prior to the expiration date of the credit will revert to the source that generated the credit and will be treated as unassigned emissions for purposes of the PSEL pursuant to OAR 340-222-0045.*

The length of time a NSR permit is valid is specified in OAR 340-224-0030(2)(a):

Approval to construct becomes invalid if construction is not commenced within 18 months after the Department issues such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within 18 months of the scheduled time. The Department may extend the 18-month period for good cause. This provision does not apply to the time period between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date;

Applicability:

Major New Source Review - OAR 340, division 224

Air Quality Analysis Requirements – OAR 340, division 225

Emission Reduction Credits – OAR 340, division 268

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Internal Management Directive:

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