

CLARK COUNTY
AIR QUALITY REGULATIONS

SECTION 58 - EMISSION REDUCTION CREDITS

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SECTION 58 - EMISSION REDUCTION CREDITS

58.1 Introduction

58.1.1 Purpose: The purpose of this Regulation is to establish procedures for the creation, banking, and use of Federal EMISSION REDUCTION CREDITS (ERCs).

58.1.2 General ERC Provisions:

58.1.2.1 The CONTROL OFFICER may allow the issuance, trading, use, redemption, and/or BANKING of eligible EMISSION REDUCTION CREDITS for Carbon Monoxide (CO), PM₁₀, Volatile Organic Compounds (VOC), and Oxides of Nitrogen (NO_x) in accordance with the limitations set forth in this Section.

58.1.2.2 Only EMISSION REDUCTION CREDITS that are SURPLUS, FEDERALLY ENFORCEABLE, PERMANENT, and QUANTIFIABLE as defined in Section 0 are eligible for BANKING, trading, or use pursuant to Air Quality Regulations.

58.2 Creating Section 58 ERCs

58.2.1 General Eligibility and Approval Criteria for Section 58 ERCs:

58.2.1.1 Eligibility Criteria for Section 58 ERCs:

58.2.1.1.1 Emission reductions eligible for Section 58 ERCs shall be limited to the following pollutants: CO, PM₁₀, NO_x, and VOC.

58.2.1.1.2 EMISSION reductions from a STATIONARY SOURCE are eligible for Section 58 ERCs, with exception to fugitive emissions. Only fugitive VOC EMISSION reductions from liquids are eligible for Section 58 ERCs.

58.2.1.1.3 STATIONARY SOURCES with **Existing Actual Emissions** exceeding the allowable EMISSIONS specified in the FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT or FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT/OPERATING PERMIT are not eligible to apply for Section 58 ERCs.

58.2.1.1.4 EMISSION reductions eligible for Section 58 ERCs shall be based on a full or partial shutdown of EMISSION UNITS and/or innovative control technology or process improvements.

58.2.1.2 Approval Criteria for Section 58 ERCs:

58.2.1.2.1 EMISSION reductions shall be consistent with the definition of an ERC in Section 0 and shall be in accordance with the revised FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT or FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT/ OPERATING PERMIT. Such revised FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT or FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT/OPERATING PERMIT shall contain conditions related to the EMISSION reductions which include, but are not limited to, the following:

- (a) hours of operation,
- (b) production rate or input rate,
- (c) recordkeeping or reporting,
- (d) enforceable monitoring methods, and
- (e) minimum time period over which the above will be averaged.

58.2.1.2.3 EMISSIONS reductions shall be SURPLUS, PERMANENT, QUANTIFIABLE, and FEDERALLY ENFORCEABLE. Such reductions in EMISSIONS shall be below the affected source's BASELINE EMISSIONS.

58.2.1.2.4 EMISSION reductions shall be in excess of what is required by Air Quality Regulations or what is required by applicable BACT or LAER for the source when the ERC Application is deemed complete.

58.2.1.2.5 EMISSION reductions shall not be accounted for in any Clark County STATE Implementation Plan and have not been relied upon in the Clark County air quality planning process.

58.2.1.2.6 The total ACTUAL EMISSION reductions associated with the Section 58 ERC Application shall have a net positive improvement on air quality, based on the total ACTUAL EMISSIONS prior to the shutdown and/or implementation of the innovative control technology or process improvements.

58.2.2 Calculation of Section 58 ERCs:

58.2.2.1 A Section 58 ERC for each REGULATED AIR POLLUTANT shall equal the net EMISSIONS reduction calculated by determining the difference between the amount of **EXISTING ACTUAL EMISSIONS** less the amount of **Emissions After the STATIONARY SOURCE Change** or **Emissions After the Shutdown**.

58.2.2.1.1 "**Existing Actual Emissions**" shall mean the ACTUAL EMISSIONS based on actual operating conditions for the STATIONARY SOURCE prior to the EMISSION reductions associated with the Section 58 ERC Application.

58.2.2.1.1.1 Such EMISSIONS shall be determined by using source tests, continuous emission monitoring systems (CEMS), or other methods approved by the CONTROL OFFICER.

58.2.2.1.1.2 Any source test or any other method utilized to determine EMISSIONS shall be the responsibility of the ERC applicant. For source tests relied upon for the ERC application process, the applicant shall comply with the following:

- (a) The source test protocol must be approved pursuant to Section 14 by the CONTROL OFFICER before the source test can be conducted. The CONTROL OFFICER shall accomplish the approval determination within 40 calendar days of submission of the test protocol;

- (b) The source owner or RESPONSIBLE OFFICIAL shall notify the CONTROL OFFICER, via written correspondence, at least ten (10) calendar days prior to conducting any source test; and
- (c) The source test results must be approved pursuant to Section 14 by the CONTROL OFFICER.

58.2.2.1.2 **"Emissions After the STATIONARY SOURCE Change"** shall mean the ACTUAL EMISSIONS, as defined in subsection (c) of the definition of ACTUAL EMISSIONS, for the STATIONARY SOURCE after the emission reductions associated with the Section 58 ERC Application have been achieved and upon commencement of operations at full permitted capacity.

58.2.2.1.2.1 Such EMISSIONS shall be determined by using source tests approved by the CONTROL OFFICER, CONTINUOUS EMISSIONS MONITORING SYSTEMS, or other methods approved by the CONTROL OFFICER.

58.2.2.1.2.2 Any source test or any other method utilized to determine EMISSIONS shall be the responsibility of the ERC applicant. For source tests relied upon for the ERC application process, the applicant shall comply with the following:

- (a) The source test protocol must be approved pursuant to Section 14 by the CONTROL OFFICER before the source test can be conducted. The CONTROL OFFICER shall accomplish the approval determination within 40 calendar days of submission of the test protocol;
- (b) The source owner or RESPONSIBLE OFFICIAL shall notify the CONTROL OFFICER, via written correspondence, at least ten (10) calendar days prior to conducting any source test; and
- (c) The source test results must be approved pursuant to Section 14 by the CONTROL OFFICER.

58.2.2.1.2.3 After the STATIONARY SOURCE change, the EMISSIONS level established from a source test or other methods shall become a FEDERALLY ENFORCEABLE EMISSIONS limit in the FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT or FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT/OPERATING PERMIT.

58.2.2.2 The determination of **"Existing Actual Emissions"** and **"Emissions After the STATIONARY SOURCE Change"** shall be based on equivalent EMISSION factors for each process that are approved by the CONTROL OFFICER. Due to the STATIONARY SOURCE change, it may not be feasible to apply the same EMISSION factor. If this situation arises, the pre-change EMISSIONS shall be the EMISSION factor contained in the previous (pre-change) FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT or FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT / OPERATING PERMIT and the post-change EMISSIONS shall be the EMISSION factor contained in the revised (post-change) FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT or FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT / OPERATING PERMIT.

58.2.2.3 **"Emissions After the Shutdown"** shall mean the ACTUAL EMISSIONS from a STATIONARY SOURCE applying for Section 58 ERC after permanent cessation of operations of the associated EMISSION UNITS being permanently shutdown.

58.2.3 Candidate methods available for EMISSIONS reductions:

58.2.3.1 STATIONARY SOURCE Shutdowns:

58.2.3.1.1 EMISSION reductions from a permanent shutdown of an EMISSION UNIT(S) at a STATIONARY SOURCE are eligible for BANKING/issuance of Section 58 ERCs.

58.2.3.1.2 A Section 58 ERC application for EMISSION reductions associated with a permanent shutdown (partial or full) of a STATIONARY SOURCE, shall be submitted within one hundred and eighty (180) calendar days after permanent cessation of operations or within one hundred and eighty (180) calendar days prior to permanent cessation of operations.

58.2.3.2 Innovative Control Technology or Process Improvements:

58.2.3.2.1 Proposed EMISSION reductions resulting from innovative control techniques or process improvements below the EXISTING ACTUAL EMISSIONS may be considered for BANKING/issuance provided the following requirements are satisfied:

- (a) A revised FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT or FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT/OPERATING PERMIT has been issued that contains the STATIONARY SOURCE change and EMISSION inventory adjustments listed in the Section 58 application;
- (b) The revised FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT or FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT/ OPERATING PERMIT EMISSIONS limits shall not exceed the "**Emissions After the STATIONARY SOURCE Change**", based on Subsection 58.2.2;
- (c) All conditions and allowances specified or implied in the original FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT or FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT/OPERATING PERMIT shall terminate immediately upon issuance of the revised FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT or FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT/OPERATING PERMIT;

58.2.3.2.2 A Section 58 ERC application for EMISSION reductions associated with the STATIONARY SOURCE change shall be submitted within one hundred and eighty (180) calendar days of issuance of the revised AUTHORITY TO CONSTRUCT/OPERATING PERMIT containing the conditions associated with the STATIONARY SOURCE change.

58.3 Section 58 ERC BANKING

58.3.1 Section 58 ERC Registry (BANKING) and Tracking System:

- 58.3.1.1 EMISSION reductions shall be quantified according to a common unit of measure known as an "EMISSION REDUCTION CREDIT," which is equivalent to one ton. Such an ERC unit shall be used in transactions established pursuant to this Section including all BANKING, issuance, trading, selling, purchasing, tracking, and redemption activities. ERCs may be issued and/or transferred in tenths of credits or greater, e.g., 200 $\frac{3}{4}$ tons of emission reductions equates to 200.8 ERCs. The standard rounding rule applies, i.e., 5 or greater round up and 4 and below round down.
- 58.3.1.2 The CONTROL OFFICER shall develop a register to BANK and track Section 58 ERC transactions.
- 58.3.1.2.1 The ERC Registry (BANK) and its use shall not interfere with the attainment or maintenance of any local or National Ambient Air Quality Standard (NAAQS) for any criteria air pollutant.
- 58.3.1.2.2 The ERC Registry (BANK) and its use shall assure that the use of Section 58 ERCs do not contravene relevant requirements of the ACT and the Nevada Revised Statutes (NRS).
- 58.3.1.3 The ERC Registry (BANK) established by the CONTROL OFFICER in accordance with this Section shall be accessible to the public and shall contain the following information:
- (a) a record of all transactions,
 - (b) a separate record for each Section 58 ERC owner and/or party involved in an ERC transaction.
- 58.3.1.4 The ERC Registry (BANK) will not contain information designated as confidential pursuant to NRS 445B.570. Release of information related to ERCs will comply with the ACT, including 40 CFR 2.108 and 2.201, and with the NRS, including Chapters 239 and 445B.

58.3.2 Procedures for Processing a Section 58 ERC Application:

- 58.3.2.1 Section 58 ERC Application. The STATIONARY SOURCE owner, RESPONSIBLE OFFICIAL, or operator shall submit a Section 58 ERC Application for EMISSION reductions pursuant to this Section to the CONTROL OFFICER. The applicant shall utilize the most current Section 58 Application form, which must be obtained from the Department of Air Quality and Environmental Management. Such application must be signed by the STATIONARY SOURCE owner or RESPONSIBLE OFFICIAL and the applicant must pay a non-refundable fee application fee of \$300.00 at time of submittal.
- 58.3.2.2 Preliminary Eligibility Determination Process for a Section 58 Application. The CONTROL OFFICER shall make a preliminary eligibility determination pursuant to Subsection 58.2.

58.3.2.3 Completeness Determination Process for a Section 58 ERC Application. The CONTROL OFFICER shall determine the completeness of an application submittal within sixty (60) calendar days of receipt of such an application. An application shall be deemed complete only when the CONTROL OFFICER has all necessary information to process the application. At a minimum, the applicant shall provide all required information as indicated in the current Section 58 ERC Application form. The CONTROL OFFICER shall determine what necessary information is required to process an application, beyond what is stated in the current application. Based on the results of the completeness determination the following shall occur:

- (a) If such application is deemed incomplete, then the CONTROL OFFICER may request additional information as necessary to determine eligibility of such EMISSION reductions.
- (b) If such application is deemed complete, then the CONTROL OFFICER shall make a final eligibility determination pursuant to Subsection 58.2.

58.3.2.4 Section 58 ERC Application Approval Process. An application shall be deemed approved only when the CONTROL OFFICER has determined that the application satisfies all federal and local requirements. Based on the results of the approval determination the following shall occur:

- (a) If the CONTROL OFFICER issues preliminary approval on the Section 58 ERC application, a Notice of Proposed Action shall be published pursuant to Subsection 58.4.
- (b) After the close of the Notice of Proposed Action period, the CONTROL OFFICER shall consider the public comments and issue a final decision on approval or disapproval of the Section 58 ERC application. Such decision shall be issued no later than one hundred eighty (180) calendar days after receipt of a complete Section 58 ERC application unless an extension is requested by the applicant or if there is an unforeseen circumstance with the application that prohibits compliance. In the latter case the Control Officer will provide written notification to the applicant with rationale and a projected resolution date.

58.3.2.5 Section 58 ERC Issuance Process:

58.3.2.5.1 Within thirty (30) calendar days after final approval of the Section 58 Application, the CONTROL OFFICER shall issue a final approval determination to the applicant. The final approval determination shall contain, at a minimum:

- (a) the applicant's information,
- (b) the STATIONARY SOURCE information,
- (c) the quantity of ERCs issued per specific pollutant,
- (d) any conditions that must be satisfied prior to issuance, and

- (e) the decision to approve or disapprove the Section 58 Application, in full or in part.

58.3.2.5.2 The CONTROL OFFICER shall record the issuance transaction into the ERC registry (BANK).

58.3.2.5.3 Section 58 ERCs for a specific pollutant within the applicable defined AIRSHED REGION shall be available when the associated pollutant specific STATE Implementation Plan (complete) for Clark County has been submitted to EPA within the time specified under the ACT or subsequently approved by EPA.

58.4 Notice of Proposed Action and Public Hearing Procedures

58.4.1 Notice of Proposed Action:

58.4.1.1 After receipt of a complete Section 58 ERC application and issuance of preliminary approval, the CONTROL OFFICER shall publish in one or more newspapers of general circulation within Clark County, Nevada, a notice listing the following items regarding the applicant:

- (a) receipt of Section 58 ERC application;
- (b) availability of information;
- (c) availability of review and analysis of the application based on its compliance with each applicable regulation;
- (d) a summary of the required Air Pollution Controls (if applicable);
- (e) preliminary determination why the Section 58 ERC application should be granted;
- (f) availability of proposed revised FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT or FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT/OPERATING PERMIT conditions (if applicable);
- (g) opportunity for any person to submit written comments on the EMISSION reductions for the source, including but not limited to the following:
 - (1) the performance test protocol used,
 - (2) other alternatives available to the STATIONARY SOURCE,
 - (3) the control technology requirements (if applicable),
 - (4) revised FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT or FEDERALLY ENFORCEABLE AUTHORITY TO CONSTRUCT/OPERATING PERMIT conditions (if applicable), and
 - (5) other appropriate considerations;

- (h) all written and oral comments must be submitted to the CONTROL OFFICER within thirty (30) calendar days from the publication date of the Notice of Proposed Action; and
- (i) opportunity for any person to request a Public Hearing pursuant to Subsection 58.4.2.

58.4.2 Public Hearing Procedures:

- 58.4.2.1 Any PERSON may petition the CONTROL OFFICER, in writing, for a Public Hearing. All such petitions shall contain: the petitioner's name, address, daytime telephone number; and comments related to the items listed in Subsection 58.4.1.1(g).
- 58.4.2.2 Upon request, the CONTROL OFFICER shall hold a Public Hearing no sooner than thirty (30) calendar days after the date of the Notice of Proposed Action but no later than seventy (70) calendar days after the date of the Notice of Proposed Action.
- 58.4.2.3 The petitioner shall receive no less than seven (7) calendar days prior written notice of the date and location of the Public Hearing.

58.5 Appeals to the Hearing Board

- 58.5.1 Any person, as specified in Subsection 58.5.2, dissatisfied with the eligibility or approval determination made by the CONTROL OFFICER pursuant to this section, may, within twenty (20) calendar days of the CONTROL OFFICER'S decision, petition the Clark County Air Pollution Control Hearing Board for a hearing to review the CONTROL OFFICER'S decision.
- 58.5.2 Only those persons submitting written comments during the Notice of Proposed Action period or in the event oral testimony is given during the Public Hearing, those persons providing such testimony shall have the right pursuant to the provisions to appeal the decision of the CONTROL OFFICER.
- 58.5.3 It is incumbent on the appellant to disclose, in writing, the issues to be considered by the HEARING BOARD at the time the appeal is filed. Only appeals within the scope of air quality rules shall be heard by the HEARING BOARD.
- 58.5.4 The appellant must demonstrate the relevance of the issues to the rules and credit issuance and how the CONTROL OFFICER'S decision is in contradiction to the rules.
- 58.5.5 Only issues related to eligibility and approval determinations are subject to appeal. Issues related to completeness determination are not subject to appeal.

58.6 Section 58 ERC Restrictions and Limitations

58.6.1 ERC Banking Restrictions and Limitations. The creation and BANKING of Section 58 ERCs shall not:

- (a) provide authority for or the recognition of any pre-existing vested right to emit any Regulated Air Pollutant;
- (b) provide Section 58 ERCs to any STATIONARY SOURCE for exemption from the BACT or LAER requirements pursuant to Air Quality Regulations;
- (c) provide dual accounting of ERCs for EMISSION reductions that have already been included as part of the Clark County's baseline EMISSION in the STATE Implementation Plan;
- (d) provide Section 58 ERCs for EMISSION reductions already required by law;
- (e) provide Section 58 ERCs for EMISSION reductions at non-permitted STATIONARY SOURCE;
- (f) provide Section 58 ERCs for EMISSION reductions achieved during a moratorium period in accordance with Subsection 58.6.4 herein;
- (g) provide Section 58 ERCs for EMISSION reductions from a permanent shutdown or MODIFICATION of a STATIONARY SOURCE where the demand for the services or product would merely shift to other sources within Clark County that would result in an emissions increase of criteria air pollutants;
- (h) provide authority for or the recognition of any rights that would be contrary to federal, statutory or regulatory law; or
- (i) provide an exemption to a STATIONARY SOURCE from any other air pollution control requirements whatsoever of federal, STATE or local laws, rules and regulations.

58.6.2 ERC Use Restrictions and Limitations. The use of Section 58 ERCs shall not:

- (a) provide authority for or the recognition of any pre-existing vested right to emit any Regulated Air Pollutant;
- (b) provide Section 58 ERCs for EMISSION reductions at non-permitted STATIONARY SOURCES;
- (c) provide Section 58 ERCs for EMISSION reductions achieved during a moratorium period in accordance with Subsection 58.6.4 herein;
- (d) provide an exemption to a STATIONARY SOURCE for emission limitations established in accordance with New Source Performance Standards (NSPS) pursuant to Section 14;
- (e) provide authority for or the recognition of any rights that would be contrary to federal, statutory or regulatory law; or

- (f) provide an exemption to a STATIONARY SOURCE from any other air pollution control requirements whatsoever of federal, STATE or local laws, rules and regulations.

58.6.3 Procedure for Use of Section 58 ERCs:

58.6.3.1 Valid Section 58 ERCs may be used to OFFSET EMISSION increases for a new or modified STATIONARY SOURCE pursuant to the requirements of Section 59.

58.6.3.2 The source owner or RESPONSIBLE OFFICIAL utilizing BANKED Section 58 ERCs to satisfy OFFSETS must demonstrate to the satisfaction of the CONTROL OFFICER that such utilization will not interfere with the attainment or maintenance of any ambient air increments identified in Section 12.

58.6.4 Moratorium on Use of Banked Section 58 ERCs. If the CONTROL OFFICER determines that additional mandatory EMISSION reductions will be necessary to attain federal, STATE, or local air quality standards, then the CONTROL OFFICER may declare a full or partial moratorium on the use of Section 58 ERCs or the BANKING of Section 58 ERCs for the applicable Regulated Air Pollutant. Such a moratorium shall be lifted after the CONTROL OFFICER determines the applicable portion of the STATE Implementation Plan demonstrates attainment of such standard.

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