

**AIR POLLUTION CONTROL DISTRICT  
COUNTY OF SAN DIEGO**

**PROPOSED NEW RULE 27.1 – FEDERAL REQUIREMENTS FOR THE SAN DIEGO  
COUNTY AIR POLLUTION CONTROL DISTRICT’S ALTERNATIVE MOBILE  
SOURCE EMISSION REDUCTION PROGRAM APPROVED ON SEPTEMBER 8, 2000**

**WORKSHOP REPORT**

A workshop notice was mailed to all companies and government agencies in San Diego County that may be subject to the proposed new Rule 27.1 – Federal Requirements for the San Diego County Air Pollution Control District’s Alternative Mobile Source Emission Reduction Program Approved on September 8, 2000. Notices were also mailed to all Economic Development Corporations and Chambers of Commerce in San Diego County, the U.S. Environmental Protection Agency (EPA), the California Air Resources Board (ARB), and other interested parties.

The workshop was held on May 7, 2008, and was attended by 9 people. The comments and District responses are provided below:

**1. WORKSHOP COMMENT:**

Does the phrase “owners of mobile sources that form the basis of a mobile source emission reduction credit (MERC)” refer to the owners of the physical mobile sources or the owners of the MERC generated by those mobile sources?

**DISTRICT RESPONSE:**

The phrase refers to the owners of the physical mobile sources.

**2. WORKSHOP COMMENT:**

Subsection (b)(8) of the proposed rule requires written EPA authorization before a mobile source emission reduction credit (MERC) can be used. Can EPA approve the credits before they have approved the rule and incorporated it in the State Implementation Plan (SIP)?

**DISTRICT RESPONSE:**

Based on discussions with EPA staff, any approval of a MERC pursuant to Subsection (b)(8) cannot be final until the date the rule is formally incorporated into the SIP. However, EPA could review a MERC before that date and issue an approval contingent on their final approval of the rule and its incorporation in the SIP.

**3. WORKSHOP COMMENT:**

When will the proposed rule be incorporated in the SIP?

**DISTRICT RESPONSE:**

The District plans to submit the proposed rule for adoption to the San Diego Air Pollution Control Board (Board) in a public hearing as soon as possible. If the proposed rule is adopted by the Board, the adopted rule will subsequently be submitted to EPA, through the California Air Resources Board (CARB), for approval and incorporation into the SIP. The process to incorporate the rule into the SIP could be completed as quickly as three months from the date it is submitted to EPA based on discussions with EPA staff. However, both the Board adoption and EPA approval is contingent on their own considerations of the rule, including any public comments that might be received.

**4. WORKSHOP COMMENT:**

Can Subsection (b)(7) be clarified to indicate that, for a facility that has a permit condition requiring it to reduce emissions at some point in the future, the term “credit is valid for the lifetime of the project” can be interpreted to mean the credit need only be valid until the date emissions are limited in the future.

**DISTRICT RESPONSE:**

The District does not believe such a clarification is necessary. If a permit contains a practicably enforceable permit limit that, at some future date, reduces the potential to emit below an initially permitted level for the equipment covered by the permit, the District would consider one “project” to be operating the facility with the initial higher potential to emit and the operation after that future date at a lower potential to emit a second project. In this case, the lifetime of the first project would only be until the date the permit condition requires reducing the potential to emit. The lifetime of the second project would be considered unlimited.

In this situation, if emission offsets are required, sufficient emission reduction credits must be surrendered before the equipment begins operating that are valid for at least the lifetime of the first project to offset the initial higher potential to emit. Moreover, sufficient permanent emission reduction credits must be surrendered before the equipment begins operating to fully offset the second project. Some of the credits could fulfill the requirements for both projects if they were permanent.

For example, suppose an electrical generating plant has an initially permitted limit on oxides of nitrogen (NOx) emissions of 100 tons per year, but the plant’s permit contains a practicably enforceable condition requiring that NOx emissions be reduced to 50 tons per year 20 years after the plant begins operation. One-hundred twenty (120) tons of emission offsets would be required pursuant to new source review rules to offset the initial potential to emit of 100 tons for 20 years, and 60 tons of emission offsets would be required for all future operations after 20 years. Therefore, the plant owners would have to surrender a total of 120 tons of emission reduction credits, either MERCs or traditional emission reduction credits, before the plant began operating. Of these credits, credits representing at least 60 tons of emission reductions would have to be

permanent credits, while credits representing the remaining 60 tons of emission reductions could have a finite lifetime but would have to be valid for at least 20 years. All of these credits would be valid for the lifetime of the first project (offsetting 100 tons of NO<sub>x</sub> emissions for 20 years) and the permanent credits would be valid for offsetting the second project (offsetting 50 tons of emissions for the remainder of the plant's lifetime).

**5. WORKSHOP COMMENT:**

In Subsection (e)(1), does the term "most stringent emission factor" with respect to replacement engines mean the highest or lowest emission factor?

**DISTRICT RESPONSE:**

The most stringent emission factor is the lowest emission factor.

**6. WORKSHOP COMMENT:**

If an engine in one of the mobile sources forming the basis of a MERC is replaced with an engine with a lower emission factor, could additional MERC credits be generated?

**DISTRICT RESPONSE:**

Proposed new Rule 27.1 limits the types of projects that can be used to generate credits in Subsections (b)(4) to replacing existing medium heavy-duty (MHD) vehicles and existing heavy heavy-duty (HHD) vehicles in refuse collection applications that are powered with diesel-fueled compression-ignition engines with new vehicles powered with gaseous fuel, and the repowering of marine vessels that are powered with diesel-fueled compression-ignition engines with new compression-ignition engines that are fueled with diesel or an alternative clean fuel. No further MERC credits could be created by replacing engines (or vehicles) powering MHD or HHD vehicles in refuse collection that already form the basis of a MERC since those engines would already be gaseous-fueled and the project (replacing one gaseous-fueled engine with another) would not meet the criteria specified in Subsection (b)(4).

Potentially, an owner of the mobile source could apply for additional MERCs created by repowering a marine vessel that already forms the basis of a MERC with a lower emitting engine. However, only emission reductions that are surplus to existing or proposed federal or state regulations applicable to the marine engines used to repower the vessel at the time of that application could be claimed. In addition, any such credits would have to be approved before being used by EPA, pursuant to Subsection (b)(8) of the proposed new rule. Obtaining such an approval may be difficult, considering EPA's evolving position on the creation and use of MERCs in general.

**7. WORKSHOP COMMENT:**

Does the rule require records to be kept for 20 years or five years, and how would Rule 27.1 affect record retention required by the existing Alternative Program?

**DISTRICT RESPONSE:**

Subsection (f)(1) of proposed new Rule 27.1 requires calendar quarterly records for certain items or activities be collected and recorded for a period of 20 years from the date the MERC is eligible to be used to offset emissions. Each of these records must be retained for five years from the date they are created. The existing Alternative Program only requires that these same records be collected and recorded for the lesser of the lifetime of the credit or 20 years. They still have to be retained for a period of five years from the date of their creation. The more stringent requirement in proposed new Rule 27.1 would only affect MERCs with a lifetime less than 20 years.

Subsection (f)(2) of proposed new Rule 27.1 would require calendar quarterly records associated with activity monitoring be collected and recorded for a period of 10 years, which is the same requirement that is in the existing Alternative Program. However, the proposed new rule requires that all of these records be retained [Subsection (f)(5)] for a period of 15 years from the start of the activity monitoring period (or effectively until five years after the end of the 10-year activity monitoring period). The existing Alternative Program only requires that these records be retained for five years from the date of their creation.

**8. POSTWORKSHOP WRITTEN COMMENT:**

We are a holder of a MERC Certificate but we do not know the mobile sources for this MERC. The certificate was transferred to us by a third party entity. My understanding is that we do not have to do recordkeeping and reporting under this circumstance. If this is not true, what is our obligation under this new rule, if any?

**DISTRICT RESPONSE:**

You are correct that you are not required to do any recordkeeping or reporting by virtue of simply being the owner of the MERC since you do not own or operate any of the mobile sources that form the basis of the MERC. However, should you use the MERC (i.e., surrender it to provide NOx emission offsets pursuant to new source review requirements) within 10 years of its date of issuance, you would have to perform calculations to determine if the emission reductions represented by the MERC are actually being achieved by the mobile sources. These calculations would be based on the activity level monitoring that is required for the owners of the mobile source or sources forming the basis of the MERC. You should currently be receiving quarterly reports on the activity level monitoring from those owners.

**9. EPA COMMENT:**

The current proposed title of Rule 27.1 – "Federal Requirements for Owners Of Mobile Sources that Generate Credits Under the San Diego County Air Pollution Control District's 'Alternative Mobile Source Emission Reduction Program For Replacing Medium And Heavy Heavy-Duty Diesel Powered Vehicles and Repowering of Marine Vessels Under Rule 27 (c)(1)(vi)' as Approved on September 8, 2000, and Conditions For Use of Such Credits" is unreasonably long and cumbersome. This appears to be more a description of the rule, rather than a title. We recommend changing the rule title to "Alternative MERC Program" or some other short descriptive phrase, and then adding a definition for this term that consists of the current proposed rule title.

**DISTRICT RESPONSE:**

The District has changed the rule title to "Federal Requirements for the San Diego County Air Pollution Control District's Alternative Mobile Source Emission Reduction Program Approved on September 8, 2000."

**10. EPA COMMENT:**

Subsection (b)(5) contains a reference to Rule 20.3, Major Stationary Sources and PSD Stationary Sources, which is not approved into the San Diego SIP. We generally cannot approve rules that contain references to other non-SIP approved rules. To resolve this issue, EPA suggests deleting all of the language after "Clean Air Act §173."

**DISTRICT RESPONSE:**

The District agrees. Subsection (b)(5) as been revised accordingly.

**11. EPA COMMENT:**

Subsections (d)(1)(i) and (d)(2)(i) should be revised to properly identify "Baja California" as "Baja California, Mexico."

**DISTRICT RESPONSE:**

The District agrees. Subsections (d)(1)(i) and (d)(2)(i) have been revised accordingly.

**12. EPA COMMENT:**

We recommend revising sections (d)(1)(iii) and (d)(2)(iii) to clarify if the term "Air Pollution Control Officer" is the officer for the District or the South Coast Air Quality Management District.

**DISTRICT RESPONSE:**

The term "Air Pollution Control Officer" in Subsections (d)(1)(iii) and (d)(2)(iii) refers to the Air Pollution Control Officer of the San Diego County Air Pollution Control District. In addition, the District has added a reference to Rule 2—Definitions—in Section (c) for terms not otherwise defined in the rule, such as "Air Pollution Control Officer."

**13. EPA COMMENT:**

The last sentence in section (f)(1) states that "for any mobile sources that are subject to an approved enhanced maintenance program, the owner of the mobile source shall provide copies of these records in the manner specified in the enhanced maintenance program." EPA notes that the MERC certificates specifically excludes the submittal of maintenance records and instead requires them to be maintained on site. To clarify the language in this section, please provide a definition of what constitutes an "enhanced maintenance program," and revise the wording to clarify which records specifically need to be maintained for mobile sources subject to the enhanced maintenance program.

**DISTRICT RESPONSE:**

The District has clarified Section (f)(1) to indicate that an enhanced maintenance program might require additional recordkeeping and additional or more frequent reporting. In addition, a definition of the term "approved enhanced maintenance program" has been added to Section (c). The District notes that the MERC certificates applicable to the creation of MERCs partially based on an enhanced maintenance program require that the owner of the mobile source(s) that form the initial basis of the MERC to maintain the mobile source(s) in accordance with the maintenance and anti-tampering procedures of the enhanced maintenance program. For purposes of this rule and the Alternative Program, the District interprets the term "procedures" to include the additional recordkeeping and reporting required by the enhanced maintenance program.

**14. EPA COMMENT:**

Section (f)(4) of the proposed rule states that "each mobile source that forms the basis of a MERC shall be equipped with a nonresettable totalizing clock hour meter, a nonresettable totalizing odometer—except for marine vessels, and any other device specified by the Air Pollution Control Officer that is necessary to monitor ongoing emission reductions or mobile source employment." It is not clear if the phrase "except for marine vessels" only applies to the

requirement for the odometer or also the clock hour meter. We recommend revising this language to clarify which types of mobile sources are to be equipped with which types of monitoring devices.

**DISTRICT RESPONSE:**

The District disagrees. The District believes that Section (f)(4) is clear as written since the phrase “—except for marine vessels” occurs inside the series rather than at the end of the series, and also is clearly included only with the series element concerning odometers. Marine vessels are not required to install odometers to comply with Section (f)(4).

**15. EPA POSTWORKSHOP COMMENT:**

As you are aware, the fundamental purpose of proposed Rule 27.1 is to ensure federal enforceability of the MERCs that were used for the Otay Mesa power plant project. We have determined that because the Authority to Construct (ATC) refers back to various portions of the "Alternative MERC Program..." as approved on September 8, 2000, and these portions are necessary to ensure compliance and thus enforceability, it will also be necessary to include these various portions into Rule 27.1. These portions may be included by inserting the text of the specific portions or by including them in the rule by reference, and including an Appendix to the rule—with the Appendix consisting of the Alternative MERC program.

Based on our review, we believe the following portions of the Alternative MERC program must be included in proposed Rule 27.1:

1. Section (c), to the extent necessary
2. All of Section (d)
3. All of Section (e)
4. Sections (f)(1) and (f)(2)
5. All of Section (h)
6. All of section (o)

**DISTRICT RESPONSE:**

The District agrees. Section (a) has been revised to incorporate the recommended portions of the Alternative Program by reference (i.e., portions of “Alternative Mobile Source Emission Reduction Program for Replacing Medium and Heavy Heavy-Duty Diesel Powered Vehicles and Repowering of Marine Vessels under Rule 27 (c)(1)(vi)” as approved on September 8, 2000).

**16. ARB COMMENT:**

There were no comments from ARB.