

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY  
CHAPTER 100. AIR POLLUTION CONTROL**

**SUBCHAPTER 7. PERMITS FOR MINOR FACILITIES**

**PART 1. GENERAL PROVISIONS**

**252:100-7-1.1 Definitions**

The following words and terms when used in this Subchapter shall have the following meaning unless the context clearly indicates otherwise:

**"Actual emissions"** means the total amount of any regulated air pollutant actually emitted from a given facility during a particular calendar year, determined using methods contained in OAC 252:100-5-2.1(d).

**"Administratively complete"** means an application that provides:

- (A) All information required under OAC 252:100-7-15(c) and 252:100-7-18(e);
- (B) A landowner affidavit as required by OAC 252:4-7-13(b);
- (C) The appropriate application fees as required by OAC 252:100-7-3; and
- (D) Valid certification by the applicant.

**"Best Available Control Technology"** or **"BACT"** means the best control technology that is currently available as determined by the Director on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs.

**"Commence"** means, as applied to the construction or modification of a minor facility to which neither a NSPS or NESHAP applies, that the owner or operator has begun the construction or installation of the emitting equipment on a pad or in the final location at the facility.

**"De minimis facility"** means a facility that meets the requirements contained in paragraphs (A) and (B) of this definition.

(A) All the air pollutant emitting activities at the facility are on the de minimis list contained in Appendix H or the facility meets all of the following de minimis criteria:

(i) The facility has actual emissions of 5 TPY or less of each regulated air pollutant, except:

- (I) that fraction of particulate matter that exhibits an aerodynamic particulate diameter of more than 10 micrometers ( $\mu\text{m}$ ) and,
- (II) GHGs as individual pollutants and as an aggregate.

(ii) The facility is not a "major source" as defined in OAC 252:100-8-2.

(iii) The facility is not a "major stationary source" as defined in OAC 252:100-8-31 for facilities in attainment areas.

(iv) The facility is not a "major stationary source" as defined in OAC 252:100-8-51 for facilities in nonattainment areas.

(v) The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.

(vi) The facility has not opted to obtain or retain an Air Quality Division permit.

(B) The facility is not subject to the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63).

**"Emergency engine"** means a stationary engine used to resume essential operations or ensure safety during sudden and unexpected occurrences including but not limited to loss of electrical power, fire, and/or flood.

**"Emission Reduction Credit" or "ERC"** means a documented decrease in actual emissions which are permanent, verifiable, and federally enforceable. An ERC does not constitute a property right. Requirements for generation, use, and tracking of ERCs are codified in OAC 252:100-10.

**"Emission Reduction Credit generator" or "ERC generator"** means the owner or operator of a facility that obtains an NSR permit that results in the creation of ERCs. Requirements for generation, use, and tracking of ERCs are codified in OAC 252:100-10.

**"Federally Enforceable State Operating Permit" or "FESOP"** means an operating permit issued under Subchapter 7 of this Chapter, including operating permits issued under the provisions of 252:4-7-33(a)(2). As such, for the purposes of this subchapter, "FESOP" and "operating permit" are synonymous.

**"FESOP Enhanced NSR process"** means a process under which the evaluation of requirements applicable under NSR is integrated with a determination of procedural and compliance requirements under the DEQ's FESOP program. This process is only available for facilities already operating under a FESOP permit. Under a FESOP enhanced NSR process, the 30-day public and EPA review period of a draft NSR permit is integrated with the review of the draft FESOP modification, and results in the issuance of a minor source construction permit whose applicable FESOP implications have also been reviewed. Later the requirements of the construction permit may be incorporated into a modified FESOP using the minor source operating permit modification process, without further public or EPA review, as authorized in OAC 252:4-7-13(g)(9) and OAC 252:100-7-18(f).

**"Gasoline dispensing facility"** means any stationary facility which dispenses gasoline into the fuel tank of a motor vehicle, motor vehicle engine, nonroad vehicle, or nonroad engine, including a nonroad vehicle or nonroad engine used solely for competition. These facilities include, but are not limited to, facilities that dispense gasoline into on- and off-road, street, or highway motor vehicles, lawn equipment, boats, test engines, landscaping equipment, generators, pumps, and other gasoline-fueled engines and equipment, as these terms are used in 40 CFR Part 63 Subpart CCCCC.

**"Hazardous Air Pollutant" or "HAP"** means any hazardous air pollutant regulated under Section 112 of the Federal Clean Air Act, 42 U.S.C. Section 7412, and subject to NESHAP.

**"Minor facility"** means a facility which is not a Part 70 source.

**"National Emission Standards for Hazardous Air Pollutants" or "NESHAP"** means those standards as published by the Administrator of the U.S. Environmental Protection Agency (EPA) pursuant to Section 112 of the Federal Clean Air Act, 42 U.S.C. Section 7412.

**"New portable source"** means a portable source that has never operated within the State of Oklahoma. This includes sources that are initially constructed and existing facilities that are relocating into Oklahoma from another state.

**"New Source Performance Standards" or "NSPS"** means those standards found in 40 CFR Part 60.

**"Permit exempt facility"** means a facility that:

- (A) has actual emissions in every calendar year that are 40 TPY or less of each regulated air pollutant (excluding GHGs as individual pollutants and as an aggregate);
- (B) is not a de minimis facility as defined in OAC 252:100-7-1.1;
- (C) is not a "major source" as defined in OAC 252:100-8-2 for Part 70 sources;
- (D) is not a "major stationary source" as defined in OAC 252:100-8-31 for PSD facilities in attainment areas;

(E) is not a "major stationary source" as defined in OAC 252:100-8-51 for facilities in nonattainment areas;

(F) is not operated in conjunction with another facility or source that is subject to air quality permitting;

(G) is not subject to an emission standard, equipment standard, or work practice standard in the Federal NSPS (40 CFR Part 60) or the Federal NESHAP (40 CFR Parts 61 and 63); and

(H) is not subject to the requirements of OAC 252:100-39-47.

**"Portable source"** means a source with design and intended use to allow disassembly or relocation.

**"Relocate"** means to move a source from one geographical location to another. The term does not include minimal moves within the facility boundaries.

**"Regulated air pollutant"** means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

**"Replacement unit"** means an emissions unit for which all the criteria listed in paragraphs (A) through (D) of this definition are met.

(A) The emissions unit is a reconstructed unit within the meaning of 40 C.F.R. Section 60.15(b)(1), the emissions unit is a reconstructed unit within the meaning of paragraph (1) in the definition of "Reconstruction" in 40 C.F.R. Section 63.2, or the emissions unit completely takes the place of an existing emissions unit.

(B) The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

(C) The replacement unit does not alter the basic design parameter(s) of the process unit.

(D) The replaced emissions unit is permanently removed from the source, otherwise permanently disabled, or permanently barred from operating by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

**"Traditional NSR process"** means a process under which the evaluation of requirements applicable under NSR is performed independently of the determination of procedural and compliance requirements under the FESOP program. This process is required for facilities that have not yet received a FESOP, but it may also be used (as an alternative to the FESOP Enhanced NSR process) for facilities that have already received a FESOP. The traditional NSR process provides a 30-day public and EPA review period on the draft construction (NSR) permit, as described in OAC 252:100-7-17 and OAC 252:4-7. This process is independent of the subsequent application, review, and issuance process for the source's initial or modified FESOP that also includes a 30-day public and EPA review period, as described in OAC 252:100-7-18 and OAC 252:4-7.

### **PART 3. CONSTRUCTION PERMITS**

#### **252:100-7-15. Construction permit**

(a) **Construction permit required.** Except as provided in OAC 252:100-7-2(b)(5), a construction permit is required to commence construction or installation of a new facility or the modification of an existing facility as specified in OAC 252:100-7-15(a)(1) and (2).

(1) **New Facility.** No person shall cause or allow the construction or installation of any new minor facility other than a de minimis facility or a permit exempt facility as defined in OAC 252:100-7-1.1 without first obtaining a DEQ-issued air quality construction permit.

(2) **Modification of an existing facility.**

(A) A construction permit is required for any modification that would cause an existing facility to no longer qualify for de minimis status, permit exempt facility status, or its current permit category.

(B) A construction permit is required for an existing facility covered by an individual permit:

(i) to add an "affected facility," "affected source," or "new source" as those terms are defined in 40 CFR Section 60.2, 40 CFR Section 63.2, and 40 CFR Section 61.02, respectively, that is subject to an emission standard, equipment standard, or work practice standard in a federal NSPS (40 CFR Part 60) or a federal NESHAP (40 CFR Parts 61 and 63) or

(ii) to add or physically modify a piece of equipment or a process that results in a permitted emissions increase of any one regulated air pollutant (excluding GHGs as individual pollutants and as an aggregate) by more than 5 TPY.

(C) The requirement to obtain a construction permit under OAC 252:100-7-15(a)(2)(B)(i) does not apply to replacement of a piece of equipment, provided the replacement unit does not require a change in any emission limit in the existing permit, and the owner or operator notifies the DEQ in writing within fifteen (15) days of the startup of the replacement unit, and/or as otherwise specified by the permit.

(b) **Permit categories.** Three types of construction permits are available: permit by rule, general permit, and individual permit. A permit by rule may be adopted or a general permit may be issued for an industry if there are a sufficient number of facilities that have the same or substantially similar operations, emissions, and activities that are subject to the same standards, limitations, and operating and monitoring requirements.

(1) **Permit by rule.** An owner or operator of a minor facility may apply for registration under a permit by rule if the following criteria are met:

(A) The facility has actual emissions of 40 TPY or less of each regulated air pollutant, except HAPs and GHGs (as individual pollutants and as an aggregate).

(B) The facility does not emit or have the potential to emit 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs.

(C) The DEQ has established a permit by rule for the industry in Part 9 of this Subchapter.

(D) The owner or operator of the facility certifies that it will comply with the applicable permit by rule.

(E) The facility is not operated in conjunction with another facility or source that is subject to air quality permitting.

(2) **General permit.** Minor facilities may qualify for authorization under a general permit if the following criteria are met:

(A) The facility has actual emissions less than 100 TPY of each regulated air pollutant, except for HAPs and GHGs (as individual pollutants and as an aggregate).

(B) The facility does not emit or have the potential to emit 10 TPY or more of any single HAP or 25 TPY or more of any combination of HAPs.

(C) The DEQ has issued a general permit for the industry.

- (3) **Individual permit.** The owners or operators of minor facilities requiring permits under this Subchapter which do not qualify for permit by rule or a general permit shall obtain individual permits. An owner or operator may apply for an individual permit even if the facility qualifies for a permit by rule or a general permit.
- (c) **Content of construction permit application.** Construction permit applications shall contain at least the data and information listed in OAC 252:100-7-15(c)(1) and (2).
- (1) **Individual permit.** An applicant for an individual construction permit shall provide data and information required by this Chapter on an application form available from the DEQ. Such data and information should include but not be limited to:
- (A) site information,
  - (B) process description,
  - (C) emission data,
  - ~~(D) BACT when required,~~
  - ~~(E)~~(D) sampling point data,
  - ~~(F)~~(E) modeling data when required, and
  - (F) all information needed to meet the requirements of OAC 252:100-10-4, 10-5, and 10-6 for any individual construction permit whose issuance will result in the creation of Emission Reduction Credits (ERCs) by a prospective ERC generator.
- (2) **General permit.** An applicant for authorization under a general permit shall provide data and information required by that permit on a form available from the DEQ. For general permits that provide for application through the filing of a notice of intent (NOI), authorization under the general permit is effective upon receipt of the NOI.
- (d) **Permit contents.** The construction permit:
- (1) Shall require the permittee to comply with all applicable air pollution rules.
  - (2) Shall prohibit the exceedance of national ambient air quality standards contained in OAC 252:100-3.
  - (3) May establish permit conditions and limitations as necessary to assure compliance with all rules.
- (e) **Duty to comply with the construction permit.** The permittee shall comply with all limitations and conditions of the construction permit. A violation of the limitations or conditions contained in the construction permit shall subject the owner or operator of a facility to any or all enforcement penalties, including permit revocation, available under the Oklahoma Clean Air Act and Air Pollution Control Rules. No operating permit will be issued until the violation has been resolved to the satisfaction of the DEQ.
- (f) **Cancellation of authority to construct or modify.** The authority to construct or modify granted by a duly issued construction permit will terminate (unless extended as provided below) if the construction is not commenced within 18 months of the permit issuance date, or if work is suspended for more than 18 months after it has commenced.
- (g) **Extension of authorization to construct or modify.**
- (1) Prior to the permit expiration date, a permittee may apply for extension of the permit by written request of the DEQ stating the reasons for the delay/suspension and providing justification for the extension. The DEQ may grant:
    - (A) one extension of 18 months or less or
    - (B) one extension of up to 36 months where the applicant is proposing to expand an already existing facility to accommodate the proposed new construction or the applicant has expended a significant amount of money (1% of total project cost as identified in the

original application, not including land cost) in preparation for meeting the definition of "commence construction" at the proposed site.

(2) If construction has not commenced within three (3) years of the effective date of the original permit, the permittee must undertake and complete an appropriate available control technology review and an air quality analysis. This review must be approved by the DEQ before construction may commence.

(h) **Expiration of authorization to construct or modify.** The authorization to construct or modify under the construction permit shall expire upon completion of the construction or modification, or as otherwise provided in (e), (f), or (g). However, the requirements established under (d) shall continue in effect until and unless the facility or affected unit ceases operations, was never constructed in the first place, or the requirement is superseded under a subsequently-issued construction permit or a FESOP that has undergone public review.

## **SUBCHAPTER 8. PERMITS FOR PART 70 SOURCES AND MAJOR NEW SOURCE REVIEW (NSR) SOURCES**

### **PART 1. GENERAL PROVISIONS**

#### **252:100-8-1.1 Definitions**

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this section, terms used in this Subchapter retain the meaning accorded them under the applicable requirements of the Act.

**"A stack in existence"** means for purposes of OAC 252:100-8-1.5 that the owner or operator had:

(A) begun, or caused to begin, a continuous program of physical on-site construction of the stack; or

(B) entered into binding agreements or contractual obligations, which could not be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the stack to be completed in a reasonable time.

**"Actual emissions"** means, except for Parts 7 and 9 of this Subchapter, the total amount of any regulated air pollutant emitted from a given facility during a particular calendar year, determined using methods contained in OAC 252:100-5-2.1(d).

**"Adverse impact on visibility"** means, for purposes of Parts 7 and 11, visibility impairment which interferes with the management, protection, preservation, or enjoyment of the visitor's visual experience of the Federal Class I area. This determination must be made by the DEQ on a case-by-case basis taking into account the geographic extent, intensity, duration, frequency and time of visibility impairments, and how these factors correlate with (1) times of visitor use of the Federal Class I area, and (2) the frequency and timing of natural conditions that reduce visibility. This term does not include effects on integral vistas.

**"Dispersion technique"** means for purposes of OAC 252:100-8-1.5 any technique which attempts to affect the concentration of a pollutant in the ambient air by using that portion of a stack which exceeds good engineering practice stack height; varying the rate of emission of a pollutant according to atmospheric conditions or ambient concentrations of that pollutant; or increasing final exhaust gas plume rise by manipulating source process parameters, exhaust gas parameters, stack parameters or combining exhaust gases from several existing stacks into one stack, or other

selective handling of exhaust gas streams so as to increase the exhaust gas plume rise. The preceding sentence does not include:

(A) The reheating of a gas stream, following use of a pollution control system, for the purpose of returning the gas to the temperature at which it was originally discharged from the facility generating the gas stream.

(B) The merging of exhaust gas streams where:

(i) the source owner or operator documents that the facility was originally designed and constructed with such merged streams;

(ii) after July 8, 1985, such merging is part of a change in operation at the facility that includes the installation of pollution controls and is accompanied by a net reduction in the allowable emissions of a pollutant. This exclusion from "dispersion technique" applicability shall apply only to the emission limitation for the pollutant affected by such change in operation; or

(iii) before July 8, 1985, such merging was part of a change in operation at the facility that included the installation of emissions control equipment or was carried out for sound economic or engineering reasons. Where there was an increase in the emission limitation or, in the event that no emission limitation existed prior to the merging, there was an increase in the quantity of pollutants actually emitted prior to the merging, it shall be presumed that merging was primarily intended as a means of gaining emissions credit for greater dispersion. Before such credit can be allowed, the owner or operator must satisfactorily demonstrate that merging was not carried out for the primary purpose of gaining credit for greater dispersion.

(C) Manipulation of exhaust gas parameters, merging of exhaust gas streams from several existing stacks into one stack, or other selective handling of exhaust gas streams so as to increase the exhaust gas plume rise in those cases where the resulting allowable emissions of sulfur dioxide from the facility do not exceed 5,000 tons per year.

**"Emission limitations and emission standards"** means for purposes of OAC 252:100-8-1.5 requirements that limit the quantity, rate or concentration of emissions of air pollutants on a continuous basis, including any requirements that limit the level of opacity, prescribe equipment, set fuel specifications or prescribe operation or maintenance procedures for a source to assure continuous reduction.

**"Emission Reduction Credit" or "ERC"** means a documented decrease in actual emissions which are permanent, verifiable, and federally enforceable. An ERC does not constitute a property right. Requirements for generation, use, and tracking of ERCs are codified in OAC 252:100-10.

**"Emission Reduction Credit generator" or "ERC generator"** means the owner or operator of a facility that obtains an NSR permit that results in the creation of ERCs. Requirements for generation, use, and tracking of ERCs are codified in OAC 252:100-10.

**"Emission Reduction Credit user" or "ERC user"** means the owner or operator of a facility that obtains and extinguishes ERCs as part of a permitting action to offset project emission increases to mitigate adverse air quality impacts and to ensure that the project results in an improvement in air quality due to a reduction of airshed emissions compared to a no project alternative.

**"Natural conditions"** includes naturally occurring phenomena that reduce visibility as measured in terms of light extinction, visual range, contrast, or coloration.

**"Secondary emissions"** means, for purposes of Parts 7 and 9 of this Subchapter, emissions which occur as a result of the construction or operation of a major stationary source or

modification, but do not come from the source or modification itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general areas as the source or modification which causes the secondary emissions. Secondary emissions may include, but are not limited to:

- (A) emissions from trains coming to or from the new or modified stationary source; and,
- (B) emissions from any offsite support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major source or modification.

**"Stack"** means for purposes of OAC 252:100-8-1.5 any point in a source designed to emit solids, liquids or gases into the air, including a pipe or duct but not including flares.

**"Visibility impairment"** means any humanly perceptible reduction in visibility (light extinction, visual range, contrast, and coloration) from that which would have existed under natural conditions.

## **PART 5. PERMITS FOR PART 70 SOURCES**

### **252:100-8-5. Permit applications**

(a) **Confidential information.** If a source submits information to the DEQ under a claim of confidentiality, the source shall also submit a copy of such information directly to the Administrator, if the DEQ requests that the source do so.

(b) **Duty to supplement or correct application.** Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, submit such supplementary facts or corrected information within 30 days unless the applicant's request for more time has been approved by the DEQ. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.

(c) **Standard application form and required information.** Sources that are subject to the Part 70 permit program established by this Chapter shall file applications on the standard application form that the DEQ makes available for that purpose. The application must include information needed to determine the applicability of any applicable requirement, or state-only requirement, or to evaluate the fee amount required under the schedule approved pursuant to OAC 252:100-5-2.2(b)(2). The applicant shall submit the information called for by the application form for each emissions unit at the source to be permitted. The source must provide a list of any insignificant activities that are exempted because of size or production rate. Trivial activities need not be listed. The standard application form and any attachments shall require that the information required by OAC 252:100-8-5(d) and/or (e) be provided.

(d) **Construction permit applications.**

(1) An application for a construction permit shall provide data and information required by this Chapter and/or requested on the application form available from the DEQ pursuant to the requirements of this Chapter. Such data and information shall include but not be limited to site information, process description, emission data and when required, BACT, modeling and sampling point data as follows:

- (A) **BACT determination.** To be approved for a construction permit, a major source must demonstrate that the control technology to be applied is the best that is available for each pollutant that would cause the source to be defined as a major source. This determination

will be made on a case-by-case basis taking into account energy, environmental, and economic impacts and other costs of alternative control systems. Unless required under Part 7 of this Subchapter, a BACT determination is not required for a modification that will result in an increase of emissions of less than 100 tons per year of any regulated air pollutant. GHGs only trigger a requirement for a BACT determination under the circumstances described in Part 7 of this Subchapter (Prevention of Significant Deterioration or PSD).

(B) **Modeling.** Any air quality modeling or ambient impact evaluation that is required shall be prepared in accordance with procedures acceptable to the DEQ and accomplished by the applicant. GHGs, either as individual pollutants or as an aggregate, are exempt from the requirements for air quality modeling and ambient impact evaluation.

(C) **Sampling points.** If required by the DEQ an application shall show how the new source will be equipped with sampling ports, instrumentation to monitor and record emission data and other sampling and/or testing equipment.

(2) Construction permit applications for new sources must also include the requirements for operating permits contained in OAC 252:100-8-5(e) to the extent they are applicable.

(3) Construction permit applications for existing source modifications that are eligible for the enhanced NSR process under 252:100-8-4(c) must indicate in the application whether they intend to utilize:

(A) the enhanced NSR process, including the public notice procedures of OAC 252:4-7-13(g)(4) and the administrative amendment process for the ensuing operating permit modification, or

(B) the traditional NSR process.

(4) Construction permit applications for existing sources where the construction permit will, on issuance, generate one or more Emission Reduction Credits (ERCs) must follow all applicable requirements of OAC 252:100-10-4, 10-5, and 10-6.

**(e) Operating permit applications.**

(1) Identifying information, including company name and address (or plant name and address if different from the company name), owner's name and agent, and telephone number and names of plant site manager/contact.

(2) A description of the source's processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the source.

(3) The following emissions-related information:

(A) All emissions of pollutants for which the source is major, and all emissions (including fugitive emissions) of regulated air pollutants. Fugitive emissions shall be included in the permit application and the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, except where such units are exempted under OAC 252:100-8-5(c) or OAC 252:100-8-3(b).

(B) Identification and description of all points of emissions described in OAC 252:100-8-5(e)(3)(A) in sufficient detail to establish the basis for fees and applicability of the Act's requirements.

(C) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard.

(D) The following information to the extent it is needed to determine or regulate emissions:

- (i) fuels,
- (ii) fuel use,
- (iii) raw materials,
- (iv) production rates, and
- (v) operating schedules.

(E) Identification and description of air pollution control equipment and compliance monitoring devices or activities.

(F) Limitations on source operation affecting emissions or any work practice standards, where applicable, for all regulated pollutants at the covered source.

(G) Other information required by any applicable requirement, or state-only requirement (including information related to stack height limitations developed pursuant to section 123 of the Act).

(H) Calculations on which the information in items (A) through (G) of this paragraph is based.

(4) The following air pollution control requirements:

(A) Citation and description of all applicable requirements and all state-only requirements.

(B) Description of or reference to any applicable test method for determining compliance with each applicable requirement and state-only requirement.

(5) Other specific information required under the DEQ's rules and statutes to implement and enforce other applicable requirements of the Act or of this Chapter or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable requirements and state-only requirements.

(7) Additional information as determined to be necessary by the DEQ to define alternative operating scenarios identified by the source pursuant to OAC 252:100-8-6(a)(9) or to define permit terms and conditions implementing OAC 252:100-8-6(f) or 252:100-8-6(a)(10).

(8) A compliance plan for all covered sources that contains all the following:

(A) A description of the compliance status of the source with respect to all applicable requirements and state-only requirements as follows:

(i) For applicable requirements and state-only requirements with which the source is in compliance, a statement that the source will continue to comply with such requirements.

(ii) For applicable requirements and state-only requirements that will become effective during the permit term, a statement that the source will meet such requirements on a timely basis shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(iii) For requirements for which the source is not in compliance at the time of permit issuance, a narrative description of how the source will achieve compliance with such requirements.

(B) For sources not in complete compliance, a compliance schedule as follows:

(i) A schedule of compliance for sources that are not in compliance with all applicable requirements and state-only requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable

requirements and state-only requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be equivalent in stringency to that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction non-compliance with, the applicable requirements on which it is based.

(ii) A schedule for submission of certified progress reports no less frequently than every 6 months.

(C) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan for an affected source, except as specifically superseded by regulations promulgated under Title IV of the Act with regard to the schedule and method(s) the source will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(A) A certification of compliance with all applicable requirements and state-only requirements by a responsible official consistent with OAC 252:100-8-5(f) and section 114(a)(3) of the Act;

(B) A statement of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods;

(C) A schedule for submission of compliance certifications during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement state-only requirements or by the permitting authority; and

(D) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(10) The use of nationally-standardized forms for acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act.

(f) **Certification.** Any application form, report, or compliance certification submitted pursuant to this Chapter shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under this Chapter shall be signed by a responsible official and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete."

## **PART 7. PREVENTION OF SIGNIFICANT DETERIORATION (PSD) REQUIREMENTS FOR ATTAINMENT AREAS**

### **252:100-8-32.1. Ambient air increments and ceilings**

(a) **Ambient air increments.** Increases in pollutant concentration over the baseline concentration in Class I, II, or III areas shall be limited to those listed in OAC 252:100-3-4 regarding significant deterioration increments.

(b) **Ambient air ceilings.** DEQ shall confirm that either (1) or (2) below has been addressed by the applicant for each pollutant determined to be significant for the PSD permit in question.

(1) By modeling or monitoring, the applicant has demonstrated that no concentration of the pollutant shall exceed exceeds whichever of the following concentrations, in subparagraph (A) or (B) below, is lowest for the pollutant for a period of exposure:

(A) the concentration allowed under the secondary NAAQS, or

~~(2)~~(B) the concentration permitted under the primary NAAQS.

(2) That all project emission increases determined to be significant for the pollutant in question have been offset by the extinguishment of a sufficient number of ERCs in accordance with OAC 252:100-10-3, 10-4(b), 10-4(c), and 10-7.

#### **252:100-8-34. Control technology review**

(a) **Requirement to comply with rules and regulations.** A major stationary source or major modification shall meet each applicable emissions limitation under OAC 252:100 and each applicable emission standard and standard of performance under 40 CFR parts 60 and 61.

(b) **Requirement to apply best available control technology (BACT).**

(1) A new major stationary source shall apply BACT for each regulated NSR pollutant that it would have the potential to emit in significant amounts.

(2) A major modification shall apply BACT for each regulated NSR pollutant for which it would be a significant net emissions increase at the source. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(3) For phased construction projects the determination of BACT shall be reviewed and modified at the discretion of the Director at a reasonable time but no later than 18 months prior to commencement of construction of each independent phase of the project. At such time the owner or operator may be required to demonstrate the adequacy of any previous determination of BACT.

**(c) Requirement to apply control technology meeting lowest achievable emission rate (LAER).**

(1) A new major stationary source that uses ERCs to offset air quality impacts of project emission increases shall apply LAER for each regulated NSR pollutant whose emissions were offset.

(2) A major modification that uses ERCs to offset air quality impacts of project emission increases shall apply LAER for each regulated NSR pollutant whose emissions were offset. This requirement applies to each proposed emissions unit at which a net emissions increase in the pollutant would occur as a result of a physical change or change in the method of operation in the unit.

(3) For phased construction projects the determination of LAER shall be reviewed and modified at the discretion of the Director at a reasonable time but no later than 18 months prior to commencement of construction of each independent phase of the project. At such time the owner or operator may be required to demonstrate the adequacy of any previous determination of LAER.

(4) If the Director determines that imposition of an enforceable numerical emission standard is infeasible due to technological or economic limitations on measurement methodology, a design, equipment, work practice or operational standard, or combination thereof, may be prescribed as the emission limitation rate.

#### **252:100-8-35. Air quality impact evaluation**

(a) **Source impact analysis (impact on NAAQS and PSD increment).**

(1) **Required demonstration.** The owner or operator of the proposed source or modification shall demonstrate that, as of the source's start-up date, allowable emissions increases from that source or modification, in conjunction with all other applicable emissions increases or

reductions (including secondary emissions) would not cause or contribute to any increase in ambient concentrations that would exceed:

- (A) any NAAQS in any air quality control region; or
- (B) the remaining available PSD increment for the specified air contaminants in any area as determined by the Director.

(2) ~~[RESERVED]~~ **Alternative offsets approach.** If the required demonstration shows that allowable emission increases from the source or modification would cause or contribute to an increase in ambient concentrations exceeding any NAAQS, the applicant may elect to offset air quality impacts by extinguishing sufficient Emission Reduction Credits (ERCs) in accordance with OAC 252:100-10-3, 10-4(b), 10-4(c), and 10-7.

**(b) Air quality models.**

(1) All estimates of ambient concentrations required under this Part shall be based on the applicable air quality models, data bases, and other requirements specified in Appendix W of 40 CFR 51 (Guideline on Air Quality Models).

(2) Where an air quality model specified in Appendix W of 40 CFR 51 (Guideline on Air Quality Models) is inappropriate, the model may be modified or another model substituted, as approved by the Administrator. Such a modification or substitution of a model may be made on a case-by-case basis or, where appropriate, on a generic basis. Modified or substitute models shall be submitted to the Administrator with written concurrence of the Director. In addition, use of a modified or substituted model must be subject to notice and opportunity for public comment under procedures set forth in Sec. 51.102 as it existed on July 16, 2007.

**(c) Air quality analysis.**

**(1) Preapplication analysis.**

(A) **Ambient air quality analysis.** Any application for a permit under this Part shall contain, as the Director determines appropriate, an analysis of ambient air quality in the area that the major stationary source or major modification would affect for each of the following pollutants:

- (i) for a new source, each regulated pollutant that it would have the potential to emit in a significant amount;
- (ii) for a major modification, each regulated pollutant for which it would result in a significant net emissions increase.

**(B) Monitoring requirements.**

(i) **Non-NAAQS pollutants.** For any such pollutant for which no NAAQS exists, the analysis shall contain such air quality monitoring data as the Director determines is necessary to assess the ambient air quality for that pollutant in that area.

(ii) **NAAQS pollutants.** For visibility and any pollutant, other than VOC, for which a NAAQS does exist, the analysis shall contain continuous air quality monitoring data gathered to determine if emissions of that pollutant would cause or contribute to a violation of the NAAQS or any PSD increment.

**(C) Monitoring method.** With respect to any requirements for air quality monitoring of PM<sub>10</sub> under OAC 252:100-8-33(e)(1) and (2), the owner or operator of the source or modification shall use a monitoring method approved by the Director and shall estimate the ambient concentrations of PM<sub>10</sub> using the data collected by such approved monitoring method in accordance with estimating procedures approved by the Director.

**(D) Monitoring period.** In general, the required continuous air monitoring data shall have been gathered over a period of up to one year and shall represent the year preceding

submission of the application. Ambient monitoring data gathered over a period shorter than one year (but no less than four months) or for a time period other than immediately preceding the application may be acceptable if such data are determined by the Director to be within the time period that maximum pollutant concentrations would occur, and to be complete and adequate for determining whether the source or modification will cause or contribute to a violation of any applicable NAAQS or consume more than the remaining available PSD increment.

**(E) Monitoring period exceptions.**

**(i) Exceptions for applications that became effective between June 8, 1981, and February 9, 1982.** For any application which became complete except for the monitoring requirements of OAC 252:100-8-35(c)(1)(B)(ii) and 252:100-8-35(c)(1)(D), between June 8, 1981, and February 9, 1982, the data that 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over the period from February 9, 1981, to the date the application became otherwise complete, except that:

(I) If the source or modification would have been major for that pollutant under 40 CFR 52.21 as in effect on June 19, 1978, any monitoring data shall have been gathered over the period required by those regulations.

(II) If the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period, not to be less than four months, the data that OAC 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

(III) If the monitoring data would relate exclusively to ozone and would not have been required under 40 CFR 52.21 as in effect on June 19, 1978, the Director may waive the otherwise applicable requirements of OAC 252:100-8-35(c)(1)(E)(i) to the extent that the applicant shows that the monitoring data would be unrepresentative of air quality over a full year.

**(ii) Monitoring period exception for PM<sub>10</sub>.** For any application that became complete, except for the requirements of OAC 252:100-8-35(c)(1)(B)(ii) and 252:100-8-35(c)(1)(D) pertaining to monitoring of PM<sub>10</sub>, after December 1, 1988, and no later than August 1, 1989, the data that 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over at least the period from August 1, 1988, to the date the application becomes otherwise complete, except that if the Director determines that a complete and adequate analysis can be accomplished with monitoring data over a shorter period (not less than 4 months), the data that 252:100-8-35(c)(1)(B)(ii) requires shall have been gathered over that shorter period.

**(F) Ozone post-approval monitoring.** The owner or operator of a proposed major stationary source or major modification of VOC who satisfies all conditions of OAC 252:100-8-54 and 40 CFR 51, Appendix S, Section IV as it existed on January 16, 1979, may provide post-approval monitoring data for ozone in lieu of providing preconstruction data as required under OAC 252:100-8-35(c)(1).

**(2) Post-construction monitoring.** The owner or operator of a new major stationary source or major modification shall conduct, after construction, such ambient monitoring and visibility monitoring as the Director determines is necessary to determine the effect its emissions may have, or are having, on air quality in any area.

**(3) Operation of monitoring stations.** The operation of monitoring stations for any air quality monitoring required under this Part shall meet the requirements of 40 CFR 58 Appendix B.

### **252:100-8-35.1. Source information**

(a) The permit application for a proposed new major stationary source or major modification subject to this Part shall contain the construction permit application content required in OAC 252:100-8-4.

(b) In addition to the requirements of OAC 252:100-8-35.1(a), the owner or operator of a proposed new major stationary source or major modification subject to this Part shall supply the following information in the permit application.

(1) The owner or operator of a proposed source or modification shall submit all information necessary to perform any analysis or make any determination required under this Part.

(2) The permit application shall contain a detailed description of the system of continuous emission reduction planned for the source or modification, emission estimates, and any other information necessary to determine that BACT or LAER as applicable would be applied.

(3) Upon request of the Director, the owner or operator shall also provide information on:

(A) the air quality impact of the source or modification, including meteorological and topographical data necessary to estimate such impact; and

(B) the air quality impacts and the nature and extent of any or all general commercial, residential, industrial, and other growth which has occurred since August 7, 1977, in the area the source or modification would affect.

## **SUBCHAPTER 10. EMISSION REDUCTION CREDITS**

### **252:100-10-1. Purpose**

This Subchapter establishes a mechanism for the generation and use of emission reduction credits (ERCs) to offset project emission increases associated with construction of a new major stationary source or a major modification as defined in OAC 252:100-8-31. The incorporation of offsets into a PSD permit is intended to reduce the impact of project emissions to ambient air quality to ensure that the project does not cause or contribute to a violation of any national ambient air quality standard.

### **252:100-10-2. Definitions**

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise. Except as specifically provided in this section, terms used in this Subchapter retain the meaning accorded them under the applicable requirements of the Act.

"Baseline actual emissions for ERC generation" means a source's emissions calculated using the procedure in OAC 252:100-10-4(a)(1). For the purposes of ERC generation, baseline actual emissions for ERC generation shall be established in units of tons per year.

"Emission Reduction Credit" or "ERC" means a documented decrease in actual emissions which are permanent, verifiable, federally enforceable, and surplus on generation and on use. An ERC does not constitute a property right.

"Emission Reduction Credit generator" or "ERC generator" means the owner or operator of a facility that obtains an NSR permit that results in the creation of ERCs.

"Emission Reduction Credit user" or "ERC user" means the owner or operator of a facility that obtains and extinguishes ERCs as part of a permitting action to offset project emission increases to mitigate adverse air quality impacts and to ensure that the project results in an

improvement in air quality due to a reduction of airshed emissions compared to a no project alternative.

"Emission Reduction Credit baseline period" or "ERC baseline period" means the consecutive 24-month period used to establish baseline actual emissions for ERC generation.

"Permit limited emissions for ERC generation" means the maximum allowable emissions for a source as established in an NSR permit which is used to generate ERCs. For the purposes of ERC generation, permit limited emissions for ERC generation shall be established in units of tons per year.

"Project emissions increase" means the increase in facility emissions associated with a project that is the subject of a PSD permit application. Project emissions increases are calculated in accordance with OAC 252:100-8-30.

"Surplus" means any emission reduction that is not otherwise relied on in the Oklahoma SIP, any SIP related requirement, any state air quality program requirement not in the Oklahoma SIP, and meets either (A) or (B) as appropriate:

(A) At the time of generation, the emission reduction is not required by any applicable local, state, or federal requirement or enforcement action; or

(B) At the time of use, the emission reduction would not have been required by any applicable local, state, or federal requirement that was promulgated or enforcement action that was applied after achievement of the emission reduction.

### **252:100-10-3. General provisions**

(a) Eligible pollutants. An emission reduction credit (ERC) may only be obtained for a reduction in nitrogen oxides (NO<sub>x</sub>) or volatile organic compounds (VOCs).

(b) No inter-pollutant ERC substitution. ERCs are pollutant specific.

(1) An ERC generated for a reduction in NO<sub>x</sub> emissions may not be used to offset an emissions increase in VOCs.

(2) An ERC generated for a reduction in VOC emissions may not be used to offset an emissions increase in NO<sub>x</sub>.

(c) ERC requirements.

(1) To establish an ERC the emission reduction must meet all of the following criteria:

(A) The emission reduction must be permanent.

(B) The emissions reduction must be verifiable.

(C) The emission reduction credit must be federally enforceable.

(D) The emission reduction credit must represent actual emissions as defined in OAC 252:100-10-4(a)(1).

(E) The emission reduction credit must be surplus at the time of generation and at the time of use.

(F) The emission reduction credit must be generated by a facility located within the state of Oklahoma.

(2) Ineligible uses of ERCs.

(A) ERCs generated under the requirements specified in this Subchapter may not be used to offset emissions in nonattainment areas as required in OAC 252:100-8-51.1, emissions reductions and offsets.

(B) [RESERVED]

(d) Permit and public notice requirements. The generation of an ERC must occur through the issuance of a construction (NSR) permit that establishes requirements in accordance with OAC

252:100-10-3(c) above and which meets the public review and permit content requirements of paragraph (1) or (2) below.

(1) The generation of an ERC by a facility currently operating under a Title V operating permit shall be established through issuance of a construction permit that meets the requirements of OAC 252:100-8-5(d), the content requirements for construction permit applications, and which has undergone Tier II or Tier III public review.

(2) The generation of an ERC by a facility currently operating under an individual facility FESOP shall be established through issuance of a construction permit that meets the requirements of OAC 252:100-7-15(c), the content requirements for a construction permit for an individual facility. In addition, the construction permit must undergo Tier II or Tier III public review.

(e) **Severability.** If any provision of this Subchapter is held invalid, the remainder of this Subchapter, including any permits issued under the provisions of this Subchapter other than those which are held invalid, shall not be affected thereby.

#### **252:100-10-4. ERC Calculations and Confirmation**

(a) **Calculation method for ERC generation.** The quantity of ERCs generated is determined by subtracting the facility's permit-limited potential emissions from the facility's baseline actual emissions for ERC generation in accordance with the procedures in (1) and (2) below.

(1) The baseline actual emissions for ERC generation shall be based on the definition of baseline actual emissions in OAC 252:100-8-31 with the changes in (A), (B), and (C) below:

(A) Baseline actual emissions for ERC generation are only available for existing units that have been operating for at least 24 months. New units and existing units that have been operating less than 24 months are not eligible for the generation of ERCs.

(B) For all units (whether they are classified as existing electric utility steam generating units or not), baseline actual emissions for ERC generation means the average rate, in TPY, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the 5-year period immediately preceding the date that a complete permit application is received by the Director for the construction permit whose issuance will result in generation of ERCs. The Director shall allow the use of a different time period upon the determination that it is more representative of normal source operation.

(i) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with start-ups, shutdowns, and malfunctions.

(ii) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(iii) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period shall be used to determine the baseline actual emissions for ERC generation for all the emissions units affected by the project. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(iv) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in TPY, and for adjusting this amount if required by (ii) above.

(C) Units operating under a plantwide applicability limit (PAL), in accordance with OAC 252:100-8-30(c) and 8-38, are not eligible to generate ERCs.

(2) Calculation of the magnitude of ERCs created on issuance of the NSR permit used for ERC generation.

(A) The quantity of ERCs shall be determined by subtracting the facility's permit limited emissions for ERC generation from the facility's baseline actual emissions for ERC generation.

(B) Determination of surplus emission reductions.

(i) In the permit record for the NSR permit establishing the ERCs, DEQ shall perform an assessment to determine whether the ERCs are surplus on generation.

(ii) If some portion of the ERCs is determined not to be surplus, the quantity of ERCs shall be reduced accordingly and that determination shall be documented in the permit record.

**(b) Calculation method for ERC use.** The quantity of ERCs that must be extinguished to offset project emission increases shall be determined in accordance with (1) and (2) below.

(1) The applicant shall extinguish 1.1 ERC for each 1.0 ton of pre-offset project emission increase.

(2) If the calculation in (1) above yields an outcome with fractional part, the number of ERCs that must be extinguished shall be rounded up to an integer value.

**(c) Determination that ERCs are surplus on generation and on use.** DEQ shall confirm that ERCs are surplus on generation and on use in accordance with (1) and (2) below.

(1) Applicant requirements.

(A) The applicant for the permit that will result in generation of an ERC shall provide a justification demonstrating that the ERCs are surplus on generation.

(B) The applicant for the permit that will result in extinguishment of an ERC shall provide a justification demonstrating that the ERCs are surplus on use.

(2) An ERC is surplus if it satisfies both (A) and (B) below.

(A) The emission reduction is not required by an otherwise applicable federal rule or state requirement enacted as part of the Oklahoma SIP.

(B) The emission reduction is not required due to a state or federal enforcement action.

### **252:100-10-5. Requirements for ERC Generators**

**(a) Eligible facilities.** Offsets may only be generated by the owners and operators of facilities that meet criteria (1) and (2) below.

(1) Facilities that are currently operating under either of the following permit types

(A) A Title V operating permit or

(B) An individual facility operating under a FESOP.

(2) To be eligible to generate ERCs, a facility must have been operating for at least 24 months prior to the date the owner or operator of the facility submits an application for an NSR permit that will generate ERCs.

**(b) Eligible emission reduction strategies.** ERCs may be awarded for either of the following emission reduction strategies:

(1) The permanent shutdown of a facility, resulting in the elimination of actual emissions associated with the facility; or

(2) The adoption of a limitation on the emission of an eligible pollutant that results in a permanent reduction in actual emissions.

**(c) Ineligible emission reduction strategies.** ERCs may not be awarded for any of the following strategies:

- (1) A reduction of emissions from a facility due to the shifting of activity from one emission unit to another emission unit at the same facility;
- (2) A reduction of emissions from a facility that is required by an otherwise applicable federal rule; or
- (3) A reduction of emissions from a facility that is due to an enforcement action.

(d) **Permitting requirements and public review.** The generation of ERCs may be accomplished through issuance of a permit that meets the requirements of (1) or (2) below.

(1) A facility currently operating under a FESOP shall obtain a construction permit that meets the requirements of either (A), (B), or (C) below.

(A) The facility shall obtain an individual facility construction permit that meets the requirements of OAC 252:100-7-15. In addition, the permit must undergo Tier II public review in accordance with OAC 252:4-7-13(g); or

(B) The facility shall obtain a major source construction permit that meets the requirements of OAC 252:100-8-4(a). In addition, the permit must undergo Tier II or Tier III public review in accordance with OAC 252:4-7-13(g); or

(C) The facility shall obtain a PSD construction permit that meets the requirements of OAC 252:100-8-4(a) and all applicable requirements of Part 7 of OAC 252:100-8. In addition, the permit must undergo Tier II or Tier III public review in accordance with OAC 252:4-7-13(g).

(2) A facility currently operating under a Title V operating permit shall obtain a construction permit that meets the requirements of either (A) or (B) below.

(A) The facility shall obtain a major source construction permit that meets the requirements of OAC 252:100-8-4(a). In addition, the permit must undergo Tier II or Tier III public review in accordance with OAC 252:4-7-13(g); or

(B) The facility shall obtain a PSD construction permit that meets the requirements of OAC 252:100-8-4(a) and all applicable requirements of Part 7 of OAC 252:100-8. In addition, the permit must undergo Tier II or Tier III public review in accordance with OAC 252:4-7-13(g).

### **252:100-10-6. ERC Registration**

(a) **Certification.** Eligible ERC generators may apply for certification of their emission reductions as an ERC according to the following requirements:

(1) The application for the construction permit that will result in creation of the ERC shall meet all applicable requirements of either (A) or (B) below as appropriate.

(A) OAC 252:100-7 for facilities currently operating under an individual facility FESOP; or

(B) OAC 252:100-8 for facilities currently operating under a Title V operating permit.

(2) The application shall be signed by the responsible official representing the ERC generator.

(3) The application shall include a statement requesting the creation of ERCs and shall provide all supporting information needed by DEQ to evaluate the request including, but not limited to, the following:

(A) The quantity of emission reductions, which shall be calculated in accordance with OAC 252:100-10-4(a).

(B) A description of the emission reduction strategy.

(C) Documentation for all of the following (where applicable):

(i) Emission unit(s) that will experience a creditable emission reduction.

- (ii) For each emission unit experiencing a creditable emission reduction, the baseline actual emissions for ERC generation.
- (iii) The ERC baseline period.
- (iv) An evaluation of any current applicable state or federal requirements limiting the emissions of the unit.
- (v) A description of all necessary monitoring, recordkeeping, and reporting requirements necessary to confirm that the emission reduction strategy represents a permanent reduction in baseline actual emissions for ERC generation.
- (vi) Affirmation by the responsible official that the limitations requested will be permanent, verifiable, federally enforceable, and surplus on generation.
- (D) A description of the protocol used to calculate the emission reductions generated.
- (E) The actual calculations performed by the ERC generator to determine the amount of emission reductions generated.

**(b) Administrative Review.** Following receipt of an eligible ERC generator's application for an NSR permit that will result in ERC generation, DEQ shall verify the information contained in the application and, if appropriate, certify that the emission reductions are creditable as an ERC. DEQ may request additional information from the eligible ERC generator if the application for certification is incomplete or otherwise deviates from the requirements detailed in this subsection.

**(c) ERC Registry.** An ERC that is certified and approved by DEQ shall be added to a common registry of generated ERCs.

- (1) The registry shall tabulate all generated ERCs that are available for purchase either in whole or in part.
- (2) The registry shall serve only to direct potential ERC users to certified ERC generators, or other entities that have acquired ERCs, with whom those potential ERC users may contract for the purchase of the desired amount of available ERCs.
- (3) ERCs shall expire five years after the date of ERC creation unless the ERC has been included in an administratively complete application for a PSD construction permit that has been submitted no more than five years after the date of ERC creation.
- (4) DEQ shall update the registry following ERC registration, acquisition, and expiration.
- (5) DEQ shall, upon request of a potential ERC user, verify whether an ERC may still be considered surplus if purchased at the time of the request.

**(d) ERC Transfer.** When another entity acquires ERCs from an ERC generator or from another party, the entity that acquires the ERCs shall notify DEQ within 30 days so that DEQ may update the ERC registry. The notification shall include identification of the responsible official representing the entity, the monetary value or other consideration associated with the ERCs transferred, and additional information needed to populate the registry.

### **252:100-10-7. Requirements for ERC Users**

**(a) Eligible Facilities.** Offsets shall only be used by the owners and operators of facilities that meet criteria (1) and (2) below.

- (1) The request to offset air quality impacts using ERCs shall be included in an application for a PSD permit.
- (2) The facility must be located within 100 miles of the facility that generated the applicable ERCs unless a determination is made in accordance with (B) below.
  - (A) The measurement to determine the distance between the facility using ERCs and the facility that generated the ERCs shall be based on the center point of each facility.

(B) DEQ may allow a facility to use ERCs generated at a facility that is farther than 100 miles away if:

- (i) In the judgment of DEQ, such an allowance is appropriate;
- (ii) The facility applying to use ERCs provides a reasonable justification for such an exception; and
- (iii) The justification is supported by air quality modeling, prevailing weather patterns, or other criteria specified by the Director.

**(b) Application.** To be eligible to use ERCs to offset project emission increases under the PSD program, an ERC user must submit an application that meets criteria (1) through (4) below.

- (1) The ERCs used to offset project emission increases must offset all project emission increases for the new major stationary source construction or new major modification to an existing source.
- (2) In addition to offsetting all project emission increases, the applicant must extinguish an additional 10% of the project emission increases to ensure that the project results in an aggregate reduction in airshed emissions.
- (3) The ERC user must submit an administratively complete application for a PSD construction permit in accordance with Parts 5 and 7 of OAC 252:100-8.
- (4) The ERC user must submit, along with the application, a document confirming the acquisition of the desired ERCs.

**(c) Administrative Review.** Following receipt of an eligible ERC user's application for the use of ERCs in offsetting project emission increases, DEQ shall verify the information contained in the application and, if appropriate, approve the issuance of a PSD construction permit that authorizes the project and the use of the offsetting emissions.

- (1) DEQ may request additional information from the eligible ERC user if the application for project authorization is incomplete or otherwise deviates from the requirements detailed in this subsection.
- (2) As part of its review of an eligible ERC user application, DEQ shall determine if an ERC may still be considered surplus.

**(d) Public Review.** In accordance with the requirements of OAC 252:4-7-33(b) and OAC 252:4-7-34(a), any permit that extinguishes ERCs to offset air quality impacts shall be required to undergo either Tier II or Tier III public participation.

**(e) Acquisition of ERCs.** The eligible ERC user is responsible for contracting with one or more ERC generators, or another entity that has obtained ERCs, to acquire a sufficient quantity of ERCs to offset 110% of project emission increases.

- (1) DEQ shall ensure that all of the following requirements are met before issuing a PSD permit where air quality impacts are offset by the extinguishment of the required quantity of ERCs. Any ERC used to offset air quality impacts must be confirmed to be surplus on the date the draft PSD permit is published for public review in accordance with OAC 252:4-7 and state review in accordance with OAC 252:100-8-8.
  - (A) Prior to publication of the draft PSD permit, DEQ must confirm that any ERC listed in the ERC registry that will be used to offset air quality impacts remains surplus.
  - (B) If, after performing the determination, DEQ concludes that only a portion of the ERCs remain surplus, the ERC user shall acquire sufficient surplus ERCs to offset 110% of project emission increases.
- (2) The ERC user must have acquired all necessary ERCs before the PSD permit may be issued.

(3) DEQ shall determine that the permit has undergone all required public notice and public participation requirements required in OAC 252:4-7-33(b) or OAC 252:4-7-34(a) as appropriate.

**(f) Extinguishment of ERCs.** The PSD permit shall specify the date(s) and/or the action(s) which will trigger the extinguishment of the ERCs by DEQ. The PSD permit holder shall confirm in writing that these actions have taken place, as required in the permit, and DEQ shall extinguish the ERCs as required and shall update the ERC registry.