



FACT SHEET

Proposed Improvements to the Arizona Emissions Bank, A.R.S. § 49-410

Overview

The Arizona Emissions Bank (“Bank”) is Arizona’s official emissions banking and credit trading source. Codified in 1999 at A.R.S. § 49-410, the Arizona Legislature established the Bank to serve as a clearinghouse and accounting mechanism for the private exchange of certified emissions reduction credits (“ERC”) for use as offsets. The Bank allows Arizona to monitor attainment of the federally imposed health-based National Ambient Air Quality Standards (“NAAQS”) while buttressing economic growth. Maricopa County Air Quality Department (“MCAQD”) has identified potential areas of improvement to the Bank, proposed below.

Background

The federal Clean Air Act (“CAA”) requires regulation of emissions from air pollutants, including ozone (oxides of nitrogen (“NO_x”) and volatile organic compounds (“VOC”)). The Arizona Department of Environmental Quality (“ADEQ”) and counties administer the permitting programs responsible for attainment of the NAAQS. If an area is nonattainment for a NAAQS, the CAA prohibits net increases in emissions of that pollutant or its precursors from new and modified existing major industrial sources that are also major for the pollutant at issue.

However, if a source can demonstrate an “offset,” the source may expand or build while allowing an area to continue moving towards attainment. An offset is a reduction in actual emissions of a pollutant in one area to compensate for emissions of that pollutant elsewhere. Offset requirements include a tradeoff ratio to ensure a continuous decrease in air pollution. New or expanding facilities may meet the offset requirement in several ways, including, adding emission controls to a process/equipment, or purchasing ERCs from other companies.

Maricopa County is currently in moderate nonattainment for the 8-hour ozone NAAQS.¹ Consequently, new or modified major stationary sources that are also major sources of NO_x and/or VOC must demonstrate a reduction of these pollutants before embarking on a project. In Maricopa County, major sources of VOCs and NO_x include power plants, tank farms, steel foundries, cup and can manufacturers, and wood furniture manufacturers.

Current Law

ADEQ administers and implements the Bank, codified at A.A.C. R18-2-1201 et seq. ADEQ may delegate credit certification to counties and counties shall establish a fee system. Only permitted sources may generate credits. ADEQ enters or “banks” the credit. A source must permanently retire 10% percent of the deposited creditable emission reductions into the Bank. The Bank expires July 1, 2019.

¹ Although in serious nonattainment for PM-10, PM-10 resolution is imminent so this Fact Sheet does not address it.

Issues

There is a shortage of banked VOC and NO_x ERCs to permit construction or modification of major sources in the ozone moderate nonattainment area of Maricopa County. As of September 12, 2016, the Bank includes approximately 266 tons of VOC ERCs and 14 tons of NO_x ERCs. The banked VOC credits may be sufficient to construct one or two major sources. The banked NO_x credits are likely insufficient to offset emissions of any project. The following factors may contribute to the shortage of banked credits:

- 10% Discount to All Deposits: Current rule requires permanent retirement of 10% percent of creditable emission reductions at the time of deposit.²
- Bank Sunset Term: Current statute terminates the Bank on July 1, 2019.
- Limited Availability of Credits from “Traditional” Sources: Typically, only permitted sources are allowed to certify credits for use as emissions offsets.

Proposed Law

To address these issues, MCAQD proposes the following changes to A.R.S. § 49-410 and rules:

- Eliminate the 10% Discount [A.R.S. § 49-410(C); A.A.C. R18-2-1205 (E)]: Remove the 10% Discount from A.A.C. R18-2-1205 (E)³ and add accordant language to statute. In a market where creditable emissions reductions are already scarce, the 10% reduction likely discourages deposits because a source can retain that 10% by foregoing the Bank and trading on the free market. Arguably, the purpose for the discount provision is to ensure permanent reductions in emissions. However, CAA offset requirements already ensure reductions.
- Remove the Bank Sunset Term [A.R.S. § 49-410 (E)]: Remove the Bank’s termination date of July 1, 2019. Sources may be reluctant to bank credits in a voluntary bank if expiration is imminent. Furthermore, all ADEQ rules are subject to a general sunset provision, which covers these rules.
- Establish Emissions Reductions from Unpermitted Sources: Add authority to generate and bank ERCs from unpermitted sources. Unpermitted sources comprise onroad and nonroad mobile sources, among others. In Maricopa County, unpermitted sources in total represent approximately 80% of the VOC and 90% of the NO_x inventories. There are simply not enough ERCs available from the balance of credits representing traditional (i.e. permitted) sources to permit major modifications of existing sources or additions of new major sources. The ERCs will have to meet eligibility criteria (real, permanent, surplus, quantifiable, and federally enforceable).

² ADEQ is currently undergoing a rule revision to remove this requirement. *See* 22 A.A.R. 2526, September 9, 2016.

³ *See* fn. 2.

PROPOSED CHANGES: A.R.S. § 49-410. Arizona emissions bank; program termination

A. The department of environmental quality shall establish and administer an Arizona emissions bank. The department shall make information on credits deposited in the Arizona emissions bank easily accessible to the Arizona commerce authority and to the public.

B. After the effective date of rules adopted pursuant to subsection ~~E D~~ of this section, a permitted source that reduces emissions of particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, or volatile organic compounds by an amount greater than that required by applicable law, rule, permit or order shall be granted credit in an amount **CERTIFIED** ~~to be determined~~ by the department of environmental quality. The credit shall be deposited into the Arizona emissions bank. To be creditable for deposit in the Arizona emissions bank, the reduction in emissions shall be permanent, quantifiable and otherwise enforceable and shall occur after August 6, 1999. This section does not prohibit a source from receiving credit by means other than the Arizona emissions bank for emissions reductions that occurred before August 6, 1999.

C. THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL CERTIFY AND BANK CREDITS FOR REDUCTIONS IN EMISSIONS OF PARTICULATE MATTER, SULFUR DIOXIDE, CARBON MONOXIDE, NITROGEN DIOXIDE, OR VOLATILE ORGANIC COMPOUNDS FROM UNPERMITTED SOURCES. THE DEPARTMENT, POLITICAL SUBDIVISIONS, AND SOURCES MAY GENERATE AND DEPOSIT THESE EMISSIONS INTO THE BANK. THE DEPARTMENT AND POLITICAL SUBDIVISIONS WITH DELEGATED AUTHORITY MAY PROMULGATE RULES REGARDING THE GENERATION, DEPOSIT, AND UTILIZATION OF EMISSIONS FROM UNPERMITTED SOURCES.

~~D. E.~~ The department of environmental quality shall register, certify or otherwise approve the amount of the credit before the credit is banked and used to offset future increases in the emissions of air pollutants. **CREDITS TO THE BANK SHALL REFLECT THE FULL APPROVED AMOUNT; THE DEPARTMENT SHALL NOT DISCOUNT CREDITS.** The credit may be used, traded, sold or otherwise expended within the same nonattainment area, maintenance area or modeling domain in which the emissions reduction occurred, only if there will be no adverse impact on air quality. Pursuant to title 41, chapter 6, article 8, the department may delegate certification of emissions credits to a county or multi-county air quality control region, but shall retain authority to register credits and administer the Arizona emissions bank.

~~E. D.~~ ~~On or before January 1, 2002,~~ The department of environmental quality shall adopt rules for the implementation and administration of the Arizona emissions bank, and establish the criteria the department will use to determine the amount of the emissions credit. The department shall establish by rule a fee system to administer the Arizona emissions bank. A county that has been delegated authority to certify emissions credits pursuant to subsection C of this section shall establish a fee system to cover the reasonable costs of certification in accordance with section 49-112, subsection B. In setting the fee, the director and a county shall consider the likely economic value of the credits and shall set a fee that does not discourage the banking of emissions credit.

~~F. E. The program established by this section ends on July 1, 2019~~ **JULY 1, 2029.**