

**RECIPROCITY AGREEMENT  
BY AND BETWEEN  
COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
AND  
STATE OF MARYLAND  
DEPARTMENT OF THE ENVIRONMENT  
  
ON THE INTERSTATE TRADING OF  
EMISSION REDUCTION CREDITS**

**THIS AGREEMENT**, is executed by and between the Commonwealth of Pennsylvania, Department of Environmental Protection, hereinafter referred to as "PADEP," and the State of Maryland, Department of the Environment, hereinafter referred to as "MDE."

**WITNESSETH:**

**WHEREAS**, the 1990 Amendments to the Federal Clean Air Act (CAA) provide specific deadlines and requirements for attainment of the National Ambient Air Quality Standards (NAAQS) for criteria pollutants; and

**WHEREAS**, criteria pollutants are defined as any air contaminant for which a NAAQS has been promulgated under 40 CFR Part 50; and

**WHEREAS**, the New Source Review provisions of the CAA require the owners and operators of major new or modified stationary sources to obtain sufficient offsetting emissions reductions by the time the source is to commence operation; and

**WHEREAS**, the Commonwealth of Pennsylvania ("Commonwealth") and the State of Maryland ("Maryland") are located in the Ozone Transport Region established under Section 184(a) of the CAA (42 U.S.C.A. § 7511c(a)) by operation of law; and

**WHEREAS**, PADEP, an Executive Agency of the Commonwealth, pursuant to the Air Pollution Control Act (35 P.S. § 4001 et seq.), is authorized to implement the provisions of the CAA in the Commonwealth; and

**WHEREAS**, the PADEP, has established and implemented an emission reduction credit (ERC) program for the purpose of offsetting increases in the emission of criteria pollutants and the ozone precursors, nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs); and

**WHEREAS**, under 25 Pa. Code § 127.208(5), ERCs may be obtained from or traded in another state which has reciprocity with the Commonwealth for the trading and use of ERCs; and

**WHEREAS**, the Maryland Department of the Environment (MDE), an executive agency of the State of Maryland (Maryland), pursuant to Titles 1 and 2 of the Environment Article of the Maryland Code is authorized to, and has promulgated, regulations which establish a new source review (NSR) program, including emission offset provisions; and

**WHEREAS**, it is necessary for new and existing major stationary air contamination sources to have sufficient ERCs to offset proposed increases in the emission of criteria pollutants and NOx and VOC emissions; and

**WHEREAS**, PADEP and MDE intend to establish reciprocity so that ERCs, valued in tons per year, may be obtained from sources or traded and used as emission offsets in either the Commonwealth or Maryland.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises herein contained, and intending to be legally bound hereby, the parties hereto covenant and agree as follows:

**PROVISIONS:**

1. PADEP and MDE mutually agree that only emission reductions which are surplus, permanent, quantifiable and federally enforceable shall be certified as ERCs. ERCs can be generated from the shutdown of an existing source, permanent curtailment in production or operating hours of an existing facility, source reduction or overcontrol of emissions from existing sources.

2. PADEP and MDE mutually agree that emission reductions which have been certified by the state in which they were generated may be used or traded in either the Commonwealth or Maryland in accordance with the trading and use requirements of the state in which the credits will ultimately be used for offset purposes, unless otherwise specified herein.

3. PADEP and MDE mutually agree that the use of ERCs to comply with NSR requirements will meet geographic, temporal restrictions and ERC expiration dates imposed by the Federal Clean Air Act and applicable State requirements.

4. The parties to this Agreement acknowledge and understand that ERCs generated by the curtailment or shutdown of sources in the Commonwealth which are not included in a plan approval (pre-construction permit) will expire for use as offsets 10 years after the date the facility ceased emitting the ERC-generating emissions. Interstate ERC transactions may not be used to circumvent the 10-year credit life for ERCs generated from curtailment or shutdown of sources in the Commonwealth. ERCs generated by Maryland sources and transferred into the Commonwealth will expire for use as offsets in accordance with 25 Pa. Code §§ 127.208(2) and 127.206(g).

5. PADEP and MDE mutually agree that ERCs generated from curtailment or shutdown sources in Maryland will not be transferred to Pennsylvania if ten or more years have passed since the creditable emission reductions occurred.

6. The parties to this Agreement understand and agree that the ERC-generating state will continue to maintain reductions in appropriate emission inventories. Notwithstanding the terms of this Agreement, PADEP will not maintain ERCs in the periodic emission inventory for shutdown or curtailment credits generated in the Commonwealth if the reductions are not used as offsets in a plan approval or pre-construction permit prior to the 10-year expiration date.

7. ERCs may not be transferred to and used in an area with a higher nonattainment classification than the one in which the ERCs were generated. PADEP and the MDE mutually agree that either state reserves the right to disapprove an ERC transfer.

8. PADEP and the MDE mutually agree to implement the necessary enforcement measures to ensure that an ERC-generating source or facility does not exceed emission limitations or violate permit conditions applicable to the creation of ERCs in the respective state. Should either of the parties to this Agreement determine that an exceedance or violation relevant to the certified ERCs has occurred, written notice shall be provided by the ERC-generating state to the ERC-recipient state within 30 days of the Agency's issuance of a Notice of Violation to the ERC generator.

9. PADEP and MDE understand and agree that it is the responsibility of the ERC-generating state to assist the ERC-recipient state in responding to comments on the proposed use of ERCs purchased in interstate transactions. The parties shall, upon request, exchange information concerning the generation, trading and use of ERCs including, but not limited to applicable statutes, regulations, emission limitations and relevant permits.

10. The parties to this Agreement mutually agree that each state will establish and maintain an ERC Registry of all certified emission reduction credits and provide electronic access to the registries. The Registry shall include information identifying the remaining ERCs available for use and shall include the effective date of the ERC transaction, quantity of used ERCs, the originating generator and the ERC generation and certification dates.

11. PADEP and MDE understand and mutually agree that each state will maintain records relevant to the creation, certification, transfer and use of ERCs and such records shall be made available to the ERC-recipient state within 10 days of a written request.

12. PADEP and MDE understand and agree that nothing in this Agreement shall be construed to compel either agency to produce information or documents which the agency deems confidential or privileged. The parties further acknowledge and understand that the right of access by the public to information under applicable state law is not affected by this Agreement.

13. Nothing in this Agreement shall affect the rights, duties and authority of either PADEP or MDE under the law. The agencies reserve their authority and rights to take any enforcement

action which they deem necessary to fulfill their duties and responsibilities under the law in each state.

14. This Agreement may be terminated by either party, with or without cause, at any time. The party initiating termination shall provide notification, in writing, at least 30 days prior to said termination.

15. In the event that both of the signatory states to this Agreement enters into a multi-party interstate agreement (Regional Agreement) for the interstate trading of ERCs, the Regional Agreement shall supersede this Reciprocity Agreement.

16. PADEP and MDE mutually agree that the provisions of this Agreement shall be severable and should any term, provision or paragraph of this Agreement be declared by a Court of Competent Jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect.

17. PADEP and MDE mutually agree that the effective date of this Agreement is the date that all parties have executed this Agreement.

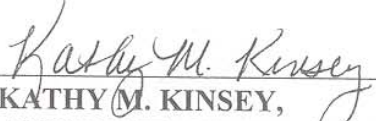
18. PADEP and MDE acknowledge and agree that this Agreement sets forth the entire understanding between the parties on this subject matter. This Agreement may be modified only in writing as an amendment to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement, intending to be legally bound hereby.

**FOR THE MARYLAND DEPARTMENT OF THE ENVIRONMENT  
STATE OF MARYLAND**

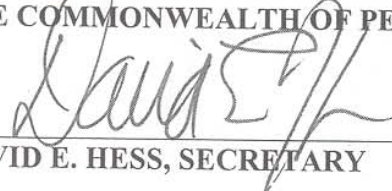
  
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**JANE T. NISHIDA, SECRETARY**

12/12/01  
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**KATHY M. KINSEY,  
ASSISTANT ATTORNEY GENERAL**

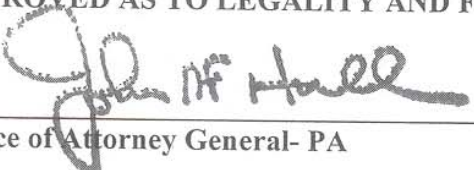
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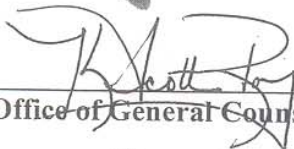
FOR THE DEPARTMENT OF ENVIRONMENTAL PROTECTION OF  
THE COMMONWEALTH OF PENNSYLVANIA,

  
\_\_\_\_\_  
DAVID E. HESS, SECRETARY

1/18/02  
\_\_\_\_\_  
DATE

APPROVED AS TO LEGALITY AND FORM:

  
\_\_\_\_\_  
Office of Attorney General- PA (Date)

  
\_\_\_\_\_  
Office of General Counsel- PA (Date) 12/26/01

Michael D. Bedrin · WBC 12/20/01  
\_\_\_\_\_  
Chief Counsel/Assistant Counsel-PA (Date)