

ENVIRONMENTAL PROTECTION

OFFICE OF AIR QUALITY MANAGEMENT COMPLIANCE AND ENFORCEMENT AIR QUALITY PERMITTING

Open Market Emissions Trading

Adopted Amendments: N.J.A.C. 7:27-1.32, 8.1, 8.3, 8.4, 8.17, 8.20, 8.25, 8.28, 16.1, 16.1A, 16.17, 19.1, 19.3, 19.13, 19.23, 19.24, 22.1, 22.3, 22.16, 22.18, 22.22, 22.28A, 22.30, 31.1, 31.2, 31.8, and 31.12; 7:27A-3.2 and 3.10

Adopted New Rules: N.J.A.C. 7:27-19.27 and 7:27-19.27 Appendix

Adopted Repeals: N.J.A.C. 7:27-18.2A, 18.11 and 30

Adopted Repeal and New Rule: N.J.A.C. 7:27-31.6

Proposed: August 4, 2003, at 35 N.J.R. 3486(a).

Adopted: February 25, 2004 by Bradley M. Campbell, Commissioner, Department of Environmental Protection.

Filed: March 5, 2004, as R.2004 d. 129, **with substantive and technical changes** not requiring additional public notice and comment (See N.J.A.C. 1:30-6.3).

Authority: N.J.S.A. 26:2C-8 et seq., especially 26:2C-8, and 26:2C-9.8.

DEP Docket Number: 15-03-07/379.

Effective Date: April 5, 2004.

Operative Date: April 25, 2004.

Expiration Date: Exempt.

The Department of Environmental Protection (the Department) is adopting herein the repeal of N.J.A.C. 7:27-30, Open Market Emissions Trading, its rules governing the Open Market Emissions Trading (OMET) program. It is also adopting herein new rules, repeals and amendments to N.J.A.C. 7:27-1, 8, 16, 18, 19, 22 and 31 and 7:27A-3, its rules governing various other programs impacted by the repeal of the OMET program.

New Jersey's OMET program has suffered from problems that diminished its effectiveness and may have resulted in an environmental disbenefit. After carefully considering these problems and the advisability of continuing the program, the Department determined, and so advised the United States Environmental Protection Agency (USEPA) and the regulated community, that it would take action to end the program. This rulemaking ends the OMET program. It also provides alternative compliance mechanisms, including extended compliance deadlines, for those who used Discrete Emission Reduction (DER) credits (in compliance with the OMET program rules then in effect) in the three years immediately preceding the Department's proposal to end the program (August 4, 2003). This rulemaking is operative April 25, 2004; from that date on, the use of DER credits is neither required nor permitted in the State of New Jersey. A more detailed description of the compliance options now available to former DER credits users still not able to satisfy applicable VOC and NO_x Reasonably Available Control Technology (RACT) requirements is set forth in the proposal of this rulemaking, which is also available from the Department's website at <http://www.nj.gov/dep/aqm/curformp.htm>.

Summary of Hearing Officer's Recommendations and Agency Responses:

William O'Sullivan, Director of the Department's Division Office of Air Quality, served as the Hearing Officer at the September 10, 2003 public hearing held at the War Memorial Building, on West Lafayette Street in Trenton, New Jersey. The Department held this public hearing to provide interested parties the opportunity to present comments on the Department's proposed rulemaking, as well as the proposed SIP revision, which this rulemaking represents. The comment period for the proposal and the proposed SIP revision closed on October 3, 2003. Comments the Department received on the proposal and the proposed SIP revision are summarized and responded to below. The Hearing Officer recommended that the Department adopt the amendments, repeals and new rules as proposed, with the changes described in the Response to Comments and the Summary of Agency-Initiated Changes, below. The Department has accepted the Hearing Officer's recommendations, which are set forth in the Hearing Officer's report. A record of the public hearing is available for inspection in accordance with applicable law by contacting:

Department of Environmental Protection
Office of Legal Affairs
ATTN: Docket No.15-03-07/379
401 East State Street
PO Box 402
Trenton, New Jersey 08625-0402

This adoption document can also be viewed or downloaded from the Department's website at www.nj.gov/dep/aqm, where Air Quality Management rules, proposals, adoptions and SIP revisions are available. More specifically, this adoption document can be accessed at www.nj.gov/dep/aqm/ometrepealadopt.htm. In addition, the Department has also posted a compliance advisory on its Compliance and Enforcement web page at <http://www.nj.gov/dep/enforcement/advisories.html> to alert the regulated community to the end of the OMET program.

Summary of Public Comments and Agency Responses:

The Department received oral and/or written comments from the following persons:

1. J. Russell Cerchiaro, Schering-Plough
2. Dave Damer, PSEG
3. Ronald Drewnowski, PSEG
4. Fiji George, Tennessee Gas Pipeline
5. Anne Gobin, Connecticut Department of Environmental Protection
6. Janet Griffin, Schering-Plough
7. William M. Hanna III, PE, Environmental Resources Management
8. M. Gary Helm, Connectiv
9. Robert Hunt, Mannington Mills
10. Russel Like, Independent Energy Producers of NJ
11. Brian Lubbert, RTP Environmental for FiberMark
12. Walter E. Mugdan, United States Environmental Protection Agency (USEPA)
13. David J. Shaw, New York State Department of Environmental Conservation (NYDEC)
14. Jeff Tittel, Sierra Club

The number(s) in parentheses after each comment corresponds to the commenter numbers above and indicate(s) the person(s) who submitted the comment. The comments are as follows:

1. **COMMENT:** The commenter expressed support for a quick adoption of the proposed rulemaking; its concerns with the program led to the filing of a complaint with the Office of Inspector General at the USEPA. The commenter was pleased that the Department's new administration also has seen serious problems with this program and is working to end it. New Jersey has some of the worst air quality in the nation and the commenter supported the State's efforts protect its citizens from air pollution, but questioned whether trading was resulting in a real reduction of pollution levels. Pollution reduction may not be occurring where credits are used in parts of New Jersey with extremely high levels of pollution and where the impact of the pollution, such as children with asthma or a whole range of other health problems, is readily apparent. Certain communities may have even experienced an increase in pollution. (14)
2. **COMMENT:** The commenter looks forward to working with the Department on resolving the approval issues and bringing all sources that participated in the OMET Program into compliance with underlying SIP requirements. (12)
3. **COMMENT:** The commenter supports New Jersey's proposal. (13)
RESPONSE to Comments 1, 2 and 3: The Department acknowledges the commenters' support for its proposal to end the OMET program in New Jersey.
4. **COMMENT:** A number of commenters expressed support for New Jersey's OMET program and supported the Department continuing with the program or reintroducing it in the future (2, 3, 4, 8, 9, 10)
5. **COMMENT:** The Department should consider cap-and-trade emissions trading programs modeled after the Acid Rain Program's SO₂ Allowance Trading Program or the OTC's NO_x Budget Trading Program for any future emissions reduction programs. (8)

RESPONSE to Comments 4 and 5: New Jersey's OMET program was beset with problems that could only be addressed by a wholesale revamping of the program. The Department is still committed to emissions trading programs, and has been encouraged by the success of cap-and-trade emissions trading programs such as the NO_x Budget program. The Department has, however, no plans in the immediate future for implementing a new OMET program.

6. **COMMENT:** The commenters preferred the continuation of the OMET program, because it addressed some of their emission compliance problems. (1, 3)

RESPONSE: The Department has crafted the rules to assist former DER credit users in coming into compliance with those Reasonably Available Control Technology (RACT) requirements for which they had been using DER credits under the OMET program. To that end, the rules provide many of the same options for compliance originally available to those subject to RACT requirements and provides time beyond the operative date of the rules to meet compliance deadlines.

7. **COMMENT:** The State has a legal obligation to have an OMET Program and should provide adequate justification for terminating the program through rulemaking rather than legislatively. (7)

RESPONSE: The Department believes the State has discharged its statutory obligation regarding establishment of the OMET program and that ending the program through regulatory changes is appropriate. The Department was directed to "propose [within 90 days after the effective date of N.J.S.A. 26:2C-9.8] ... rules ... that establish emissions trading and banking programs that use economic incentives to make progress toward the attainment or maintenance of the [National Ambient Air Quality Standards] ... [and to] adopt those rules ... within 90 days after proposal." (N.J.S.A. 26:2C-9.8a) Aside from not meeting the somewhat impracticable 90-day deadlines for proposal and subsequent adoption, the Department fully complied in good faith. Notwithstanding this compliance, the USEPA proved reluctant to approve the OMET program under the Clean Air Act, a prerequisite for the rules under N.J.S.A. 26:2C-9.8c. The Department has determined that the OMET rules do not result in quantifiable emissions reductions that would be creditable under the SIP, as required under N.J.S.A. 26:2C-9.8c.

8. **COMMENT:** The Department should allow the OMET program to continue until all DER credits are used or retired to protect current holders of DER credits from financial losses. (7)

9. **COMMENT:** Because the Department did not completely accept the OMET program, those who entered into trades did so knowing that it was at their own risk and that they had no reasonable expectation for these credits to last forever. (14)

RESPONSE to Comments 8 and 9: The OMET rules make clear that there was never intended to be a property interest in DER credits. N.J.A.C. 7:27-30.3(a) explicitly provides that a credit does not constitute or convey a property right. From the program's outset, in the summary of the original proposal (28 N.J.R. 1147(b) (Feb. 20, 1996)), the Department stated:

Most importantly, N.J.A.C. 7:27-30.3(a) specifies that a DER is not a property right. As a result, if regulatory changes reduce or eliminate the value of a DER, the holder of the DER cannot claim that a taking has occurred. The Federal Clean Air Act contains a corresponding provision for the SO₂ trading program (42 U.S.C. §7651b(f)), and the USEPA has also included this provision in the proposed OMTR. The USEPA has stated (and the Department agrees) that treating DERs as "property" is unnecessary to secure a stable commercial setting for DER trading and could produce "undesired and perverse" results, such as requiring a government agency to compensate the holder of a DER if it takes action that substantially reduces the value of a DER.

N.J.A.C. 7:27-30.3(a) unambiguously stated that "[a] credit does not constitute or convey a property right [and that n]othing in [these rules] shall be construed to limit the authority of the State of New Jersey or the United States to terminate or limit DER credits." This statement was consistent with the guidance provided by the USEPA's Economic Incentive Program Guidance ("Improving Air Quality with Economic Incentive Programs"), January 2001, which says:

Emission reductions and emission allowances generated, traded, and used in emission trading EIPs do not have property rights associated with them. They simply represent a limited authorization to emit for the entity holding the tradable reduction or allowance. Your EIP rule must specifically state this.

As such, all interested persons, from the start, were on notice that they participated at risk and that DER credits could have limited or no value.

10. **COMMENT:** The commenter supported the Department's proposal to allow "recent users of DER credits" a period during which the remaining DER credits would be usable.
(2)
RESPONSE: The Department acknowledges the commenter's support but notes that DER credits will not, as the commenter suggests, be usable after April 25, 2004. Rather, the rules provide that there will no longer be either an option or an obligation to use DER credits after April 25, 2004. During the 12 months following April 25, 2004, former DER credit users will be required to come into compliance with the RACT requirements, without using DER credits.
11. **COMMENT:** The commenter challenged the Department's findings that the problems with the OMET program should result in its termination and offered suggestions on how to fix the program without ending it. For example, concern with the OMET program's third-party verification process could have been addressed by a supplemental Departmental review. Also, concern that the OMET program allows credits to be based on emission reductions that occurred years before they are used could be addressed by establishing a time frame in which the credits must be used. The commenter also responded to the Department's concerns that the OMET program does not cap emissions and thus provides no assurance of achieving an air quality benefit by stating that New

Jersey needs an open market system in addition to the existing cap-and-trade program. Open market systems should not be limited by a cap but should be limited by the market's demand for emission reductions. If this demand is sufficient, the market will provide economic and environmental benefits. (7)

12. **COMMENT:** The Department should not end the OMET program just because some facilities may have based their air compliance strategy entirely on the use of DER credits. (7)

13. **COMMENT:** The commenter countered the Department's objection to reliance by DER credit users on the OMET program to meet emissions requirements by stating that it was necessary for a number of participants to base a portion of their air compliance strategy on the use of DER credits in order to support demand for DER credits. (8)

14. **COMMENT:** Perhaps to fix some of the issues the Department is concerned about, there could be penalties for misusing the credits or misrepresenting the credits offered. The program could be funded with higher transaction fees than exist now. The Department could increase the percentage of emissions that are taken off the table in each transaction to make it an even greater real benefit to the environment, and yet still motivate people to reduce emissions. The Department could also require the purchase of DER credits in settlements for penalties, instead of just collecting a fine. This would reward a facility that created a real benefit to the environment and would create a greater market for DER credits. This in turn would encourage people to create a bigger supply of DER credits, thus helping the environment. (9)

RESPONSE to Comments 11 through 14: The Department acknowledges the commenters' suggestions for improvements. However, the Department determined that the extent and range of the problems with the OMET program warranted its termination, as discussed at greater length in the proposal. See 35 N.J.R. 3486(a) at 3487 (August 4, 2003).

15. **COMMENT:** The commenter challenged the Department's decision to terminate the OMET program based on an assessment that the program has not contributed significantly to improvements in air quality in New Jersey. (7)

RESPONSE: As the Department stated in the proposal, the very problems inherent in the OMET program render suspect any conclusions as to environmental benefit that one might draw from the number of credits used or retired. At least in part, for this reason a significant number of credits of questionable validity were retired as part of the January 2002 settlement involving PSEG Fossil LLC ("2002 PSEG Fossil settlement"). Accordingly, the Department no longer has confidence in the figures relied upon in the Environmental Impact section of the July 6, 1999 OMET proposal to project the net emissions reductions per year. (See 31 N.J.R. 1671(a) at 1681). In addition, only the retirement of credits and the 10-percent add-on would represent a direct environmental benefit; the entire number of credits used or retired would not. Nevertheless, this was not the only basis for the decision to terminate the program.

16. **COMMENT:** The commenter asked the Department to clarify its proposal not to extend the compliance deadlines to former DER credit users who employed DER credits to satisfy either a penalty imposed pursuant to N.J.A.C. 7:27A-3.10 or an Administrative Consent Order (ACO) prior to January 1, 2003. Regardless of any compliance, consent

order or penalty requirement, all former DER credit users should be afforded the extension. The commenter asked the Department to clarify whether a company employing DER credits pursuant to N.J.A.C. 7:27-19.3(g) that entered into a penalty settlement could also avail itself of the extension provided in N.J.A.C. 7:27-19.3(h). (4) **RESPONSE:** The Department proposed the exclusion at N.J.A.C. 7:27-16.1A(h) and N.J.A.C. 7:27-19.3(h) so that only those facilities that had relied on their continued ability to comply with RACT requirements by using DER credits would have additional time to make necessary changes to comply. The extended compliance deadline provisions at N.J.A.C. 7:27-16.1A(g) and N.J.A.C. 7:27-19.3(g) would not apply to a facility whose only use of DER credits had been in connection with a penalty settlement or an ACO. Nor would they apply to a facility that had used DER credits in the past where granting a compliance deadline extension would have the effect of extending a deadline contained in an ACO entered into with the Department prior to January 1, 2003, unless compliance with the ACO requires the use of DER credits.

In response to this comment, the Department has modified N.J.A.C. 7:27-16.1A(h) and N.J.A.C. 7:27-19.3(h) on adoption to clarify that the exclusion from the compliance deadline extension provisions of N.J.A.C. 7:27-16.1A(g) and N.J.A.C. 7:27-19.3(g), respectively, does not apply to former DER credit users whose only use of DER credits was either 1) to satisfy a settlement of a penalty or 2) in connection with an Administrative Consent Order entered into with the Department prior to January 1, 2003. The Department will review, on a case-by-case basis, the circumstances of credit use by any potential former DER credit users who wish to qualify for the extended compliance deadlines or the option to use NO_x Budget allowances to comply with NO_x RACT requirements.

17. **COMMENT:** A number of commenters expressed support for the use of NO_x Budget allowances by former DER credit users after the OMET program ends. (2, 4, 7, 11)
18. **COMMENT:** One commenter supported the use of NO_x budget allowances on the grounds that they have none of the perceived shortcomings of DER credits; their use will result in reduced summertime emissions of NO_x within the region, even when they are used in the non-ozone season. Use in the seven non-ozone season months would reduce the number of allowances available for use during the ozone season, and use of NO_x Budget allowances would result in real NO_x reductions. Allowing the use of NO_x Budget allowances may also eliminate the need for the Department to issue alternative emission limits (AELs). Also, the relatively high cost of NO_x Budget allowances would discourage sources from becoming overly dependent on their use. (2)
19. **COMMENT:** The commenter strongly supported the use of NO_x Budget allowances. The use of NO_x Budget allowances has a high degree of quality, compliance and enforcement assurance without causing undue hardship on pipeline operators. (4)
RESPONSE to Comments 17 through 19: The Department acknowledges the commenters' support for this element of the rulemaking and agrees there would be environmental benefit in allowing the use of NO_x Budget allowances for this purpose.
20. **COMMENT:** The commenter supported allowing the use of NO_x Budget allowances but recommended that this option be extended to all past users of DER credits, not just those who qualify as "former DER credit users." Allowing all DER credit users, not just

recent ones, the option of using NO_x Budget allowances for compliance would not penalize those sources that have made great efforts to minimize such credit use in recent years. This is especially true for electric-generating sources, which face constantly changing conditions, and which may need continued flexibility in compliance planning to provide highly reliable electric service. (2)

21. **COMMENT:** The option of using NO_x Budget allowances should be extended to any entity that is subject to a N.J.A.C. 7:27-19 standard that could have been met through the use of DER credits under the OMET program. (7)

22. **COMMENT:** At the hearing, the Department had inquired about the impact if sources with electric-generating units that generate electricity for sale or use primarily during high electric demand days (otherwise known as "peaking sources") were to use NO_x Budget allowances. While there is a valid concern that the use of NO_x Budget allowances on peak ozone days by peaking sources (even including those that are not former DER credit users) would contribute to high ozone levels, this use would only slightly expand the use set forth in the proposal. (2, 3)

RESPONSE to Comments 20 through 22: The Department has limited the option of using NO_x Budget allowances to former DER credit users, as that term is defined in the new rule at N.J.A.C. 7:27-19. This will provide compliance options only to those who have established, by their recent use of DER credits, a bona fide need for such alternatives. That is, the Department assumes that a former DER credit user who has not used DER credits recently has found another way to comply with NO_x RACT requirements. One concern was that this option not be extended to peaking sources, other than those that may qualify as "former DER credit users" and that wish to use NO_x Budget allowances to comply with emission limits during the ozone season. If peaking sources are being used on high ozone days, the NO_x emissions need to be minimized on those days in order to avoid exceedance of the National Ambient Air Quality Standard (NAAQS) for ozone in New Jersey.

The Department does not believe it is appropriate to provide any additional opportunities to use emission reductions achieved on low ozone days to compensate for high NO_x emissions on high ozone days. Hence, the Department is not incorporating the suggestion to expand the use of NO_x Budget allowances (which measure compliance over a five-month period) to comply with NO_x RACT provisions (which measure compliance on a daily basis during the ozone season). Again, only the very limited use of NO_x Budget allowances by sources that previously had relied on DER credits was contemplated by the proposal to revoke OMET. Such a limited use will allow sources that relied on DER credits more time to phase in air pollution control to achieve the NO_x RACT limits, while also reducing the availability of NO_x Budget allowances for ozone season NO_x emissions. Since the NO_x RACT requirements apply 12 months per year, this provision would usually result in more than a one-to-one reduction in NO_x Budget allowances during the ozone season (that is, for example, using NO_x Budget allowances would represent a 12-to-five reduction for a continuously operating source). The one potential air quality disbenefit that could result would be if a peaking source that is used almost exclusively during the summer is allowed to use NO_x Budget allowances to avoid RACT on high ozone days. The Department will examine carefully the impact of extending this option to former DER credit users and will consider eliminating this option if warranted. The Department will further discuss the issue of peaking unit emissions

when ozone levels are high with the regulated community before embarking on any revisions to its rules to address this issue. The Department notes, however, that it is working with sources that relied on the use of DER credits in the past, on a case-by-case basis, to ensure compliance without the use of these credits.

23. **COMMENT:** The commenter objected generally to providing former DER credit users the option of using NO_x Budget allowances to satisfy NO_x RACT requirements. (12)
RESPONSE: As the Department noted in the proposal, permitting the use of NO_x Budget allowances has an environmental benefit. Use by former DER credit users to compensate for exceedances of NO_x RACT emissions limits for an entire calendar year reduces the quantity of allowances available to NO_x Budget Program participants during the ozone season, when NO_x reductions are most important. With fewer allowances available and, consequentially, at a greater cost, the alternative of investing in greater environmental controls will become more attractive to NO_x Budget program participants and further benefit the environment. The concept of allowing the use of NO_x Budget allowances to meet NO_x RACT requirements was embraced by the member states of the Ozone Transport Commission (OTC) in developing a Model Rule for Additional Nitrogen Oxides (NO_x) Control Measures in 2001. This model rule was one of six model rules developed by OTC as part of a regional effort to attain and maintain the one-hour ozone standard, address emission reduction shortfalls that were identified by the USEPA in specific State Implementation Plans to attain the one-hour ozone standard, and reduce eight-hour ozone levels. New Jersey decided to develop rules based on this model rule and submitted its intentions to the USEPA on October 8, 2001, in proposed revisions to the New Jersey SIP for the Attainment and Maintenance of the One-Hour Ozone National Ambient Air Quality Standard. Allowing the use of NO_x Budget allowances by former DER credit users represents a far less significant use of allowances than the model rule permits. The USEPA participated in the process of developing the OTC model NO_x rule, which contained provisions allowing sources to use NO_x Budget allowances to compensate for excess emissions from its earliest drafts, and the Department is unaware of any objection by the USEPA to provisions in the model rule regarding the use of these allowances.
24. **COMMENT:** The Department should not allow the use of NO_x Budget allowances by former DER credit users to meet the NO_x RACT requirements of subchapter 19 because this mixes a State program with a regional program and negatively impacts participants of the regional program. This is market manipulation and would reduce the number of allowances available to NO_x Budget participants, not only in New Jersey but also in the other NO_x SIP call states. (8)
25. **COMMENT:** The commenter noted that, while it is clear from the NO_x Budget rules that the purpose of a NO_x Budget allowance is to comply with the requirements of the NO_x Budget Trading Program, the NO_x Budget rules do not specifically prohibit nor promote the use of allowances outside of the NO_x Budget program. The commenter recommended against states using the deduction of allowances allocated under the NO_x Budget Trading Program to comply with emission limitation requirements in other programs, since the more allowances that get taken out of the NO_x Budget program, the fewer allowances that will be available for compliance by Budget sources. (12)

RESPONSE to Comments 24 and 25: The Department has extended the compliance option of using NO_x Budget allowances in order to minimize disruptions that the repeal of the OMET program might entail, not in an attempt to explore new uses for NO_x Budget allowances. As the USEPA points out, there is no prohibition in the NO_x Budget program against the use of allowances in this manner. In fact, in a number of instances governmental entities, including the USEPA in the 2002 settlement with PSEG Fossil LLC, have required the retirement of NO_x Budget allowances as part of a settlement of alleged environmental violations, thus reducing the number of NO_x Budget allowances available to NO_x Budget program participants. As the number of allowances is reduced, each remaining allowance would become more costly, which in turn makes the alternative of reducing emissions more economically attractive. Thus, to the extent that former DER credit users choose to use NO_x Budget allowances, the Department expects that this greater demand for allowances would cause the price to rise, making the alternative of investing in greater environmental controls more attractive to NO_x Budget program participants and resulting in an environmental benefit. However, the Department does not expect the use of NO_x Budget allowances by a small group of former DER credit users to significantly affect or adversely impact the NO_x Budget program. It appears that nearly all of the former DER credit users would be able to comply with emission requirements before the adopted extended compliance deadline without the use of NO_x Budget allowances. Thus, the projected number of allowances that may be needed is relatively small when compared to the total number of allowances in the program.

The Department also notes that New Jersey's NO_x Budget Program rules already allow entities other than NO_x Budget sources to purchase NO_x Budget allowances; the NO_x Budget program SIP has been approved by the USEPA. See N.J.A.C. 7:27-31.13(p), which sets forth the procedure whereby anyone can establish a general account for the purpose of holding and transferring NO_x Budget allowances, and N.J.A.C. 7:27-31, which provides that any person who holds an allowance in an account may elect to permanently retire that allowance. For example, a private citizen or an environmental group can purchase and retire NO_x Budget allowances to benefit the environment. This is commonly the case in the USEPA's Acid Rain Program, where successful bidders for sulfur dioxide (SO₂) allowances include university and law school environmental classes and student groups. (See <http://www.epa.gov/airmarkets/auctions/2003/03summary.html> for a complete list of environmental groups bidding in the 2003 auction for SO₂ allowances to help clean the air.) As the USEPA notes on its Allowance Trading web page (<http://www.epa.gov/airmarkets/trading/buying.html>), under both the Acid Rain Program and the Ozone Transport Commission NO_x Budget Program, anyone, including both regulated companies and members of the general public, can purchase allowances. Some individuals and groups purchase allowances as an environmental statement, because withholding allowances from the market prevents those allowances from being used by utilities or other sources of NO_x emissions.

26. **COMMENT:** Because NO_x budget allowances are traded and usable for compliance across the entire SIP Call region, emission reductions associated with a particular allowance cannot be associated with a specific location. Therefore, the geographic scope

of the NO_x Budget Trading Program, and of allowances under that program, is not consistent with the current NO_x RACT requirements. (12)

RESPONSE: The Department envisions a very limited use of NO_x Budget allowances with an extremely limited impact as a result of this rulemaking. Usage of DER credits from January 1, 2000 to the time the proposal was filed accounted for 695 tons of NO_x per year, of which credits representing about 452 tons of NO_x were used to compensate for Maximum Emergency Generation (MEG) alerts. Since this adoption removes the requirement that DER credits be used in connection with MEG alerts, the maximum potential use of NO_x Budget allowances would be 243 tons for the three-year period, or an average of 81 tons per year of NO_x emissions. This represents less than 0.2 per cent of the New Jersey point source inventory for NO_x of 50,000 tons per year. It is worth noting that only about 34 tons are attributable to ozone season use, which is the time of greatest concern regarding the environmental impact of these emissions.

In addition, only one of the 12 former DER credit users has expressed a serious interest in actually exercising this option. The Department anticipates that many of the former DER credit users will have complied with the NO_x RACT requirements of N.J.A.C. 7:27-19 before the compliance date and thus will not need to use NO_x Budget allowances.

Furthermore, the Department notes an apparent discrepancy between the USEPA's position on regional trading programs in the context of New Jersey's NO_x RACT program and its position on its recently-proposed Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Interstate Air Quality Rule) (69 Fed Reg 4566, January 30, 2004). In the preamble to that proposed rulemaking, the USEPA recognizes that a cap-and-trade program is a good tool in dealing with regional ozone issues.

See: http://www.epa.gov/air/interstateairquality/iaqr_preamble_final_v1.pdf, pp 302 - 305.

27. **COMMENT:** The proposed notice requirements for using NO_x Budget allowances are inconsistent with the reporting and recordkeeping provisions of the USEPA's RACT guidance, in that the proposal does not ensure that the State will timely review and approve these notices. Sources should not be permitted to use allowances until after the State approves notices, emission quantification protocol and supporting documentation. The proposal does not define a violation of the new compliance option to use NO_x Budget allowances, nor does it specify what the appropriate penalties for such a violation would be. (12)

RESPONSE: It is anticipated that the use of NO_x Budget allowances by former DER credit users will be on a very limited scale, with very few potential players. In fact, to date only one potential former DER credit user has indicated an interest in using NO_x Budget allowances to comply with NO_x RACT requirements. The Department expects to be able to process notices in a timely fashion and, if necessary, respond appropriately if there are problems with the notices, emission quantification protocols or supporting documentation. As with any seven-day notice, the source proceeds at its own risk; a later finding by the State of a use of allowances not consistent with the requirements would constitute a non-compliance with NO_x RACT requirements and would result, if appropriate, in an enforcement action.

- 28. COMMENT:** To be consistent with the USEPA's Economic Incentive Program (EIP) Guidance on trading to meet RACT, the rules should provide for USEPA approval of emission quantification protocols, or all emission quantification protocols should be included with the SIP submittal for USEPA approval. (12)
- RESPONSE:** The handful of former DER credit users electing to employ the option of complying with NO_x RACT requirements through the purchase of NO_x Budget allowances must use the protocol established at N.J.A.C. 7:27-19.27(b). This protocol, as part of this rulemaking, will be submitted to the USEPA for approval as a revision to New Jersey's SIP.
- 29. COMMENT:** The Department must demonstrate that the level of emission reductions resulting from implementation of the new compliance option will be equal to those reductions expected across the State from the direct application of RACT. The rules should provide for an environmental benefit by requiring a 10 percent extra reduction in emissions, since this proposal includes trading in nonattainment areas of New Jersey that are needing and lacking approved attainment demonstrations. (12)
- RESPONSE:** The Department recognizes that it would not be possible to quantify the precise level of emission reductions that would result from the use of NO_x Budget allowances as a RACT compliance option. However, there is greater benefit to the environment in permitting the use of these allowances than would be realized if a former DER credit user, unable to comply with NO_x RACT requirements without the use of DER credits, were to apply for and be granted an alternative maximum allowable NO_x emission rate pursuant to N.J.A.C. 7:27-19.13 (otherwise referred to as a NO_x "alternative emission limit" or "AEL"). In that case, the source would be free to continue operating at a higher level of emissions and without the benefit of retiring real and reliably quantified NO_x Budget allowances. To date only one potential former DER credit user has expressed interest in using NO_x Budget allowances as a RACT compliance option. This source may or may not qualify for an AEL. If it does, the Department is confident that the use of NO_x Budget allowances will offset the loss of emission reductions that NO_x RACT compliance would otherwise have entailed. Furthermore, emission reductions will be realized by retiring ozone season NO_x Budget allowances to meet a year-round requirement, possibly with even greater environmental benefit. Requiring an extra 10 percent in emissions reductions in the OMET program was a statutory requirement that does not apply to the use of NO_x Budget allowances. The Department declined to make this change to the program, in an attempt to keep the use of NO_x Budget allowances by former DER credit users as simple and straightforward as possible. Because using NO_x Budget allowances for this purpose already has an environmental benefit in removing those allowances for use in the ozone season, the Department did not feel it was necessary to complicate the process for any additional environmental benefit.
- 30. COMMENT:** Allowing a budget source to use NO_x budget allowances to satisfy its RACT requirements contradicts the underlying assumption of the NO_x SIP Call analysis, since a SIP Call source is considered to be in compliance with RACT requirements. USEPA's analysis for the NO_x SIP Call included compliance with RACT as part of the

base case and then a determination was made as to which states significantly contributed to ozone transport and what additional reductions were needed. (12)

RESPONSE: The Department is unaware of any NO_x Budget Program requirement that would prohibit a budget source from using NO_x Budget allowances to satisfy its RACT requirements. The commenter did not articulate why this use of NO_x Budget allowances would be problematic. Furthermore, only one source expressed an interest in this compliance option and it is not a NO_x budget source.

31. **COMMENT:** The option of using NO_x Budget allowances is not consistent with the NO_x Budget Trading Program, since it would shift emissions from a source category (that is, Budget sources) with extremely reliable continuous emissions monitor (CEM) emissions data to another source category (that is, non-Budget sources) that may not meet the same emissions monitoring and reporting standards. In essence, the rules would include additional source categories into the NO_x Budget Trading Program, allowing for inter-sector trading, without providing that those sources meet the minimum criteria in the NO_x Budget rules for monitoring and reporting emissions and for having a Responsible Official. This difference between reliable emissions measurement methods between two sources was one of the flaws USEPA identified in the previous OMET Program that DEP's proposal does not correct. (12)

RESPONSE: The Department will take these concerns into account when it reviews the seven-day notices and Notices of Use submitted by former DER credit users interested in exercising this compliance option. The Department notes that not all budget sources have CEMs while some of the former DER credit users do.

32. **COMMENT:** The Department should reopen for cause those operating permits that contain OMET-related permit conditions with a remaining permit term of three or more years from the operative date of the rule. Any reopenings should be completed no later than 18 months after the rules are operative. In the interim, the Department should not issue any Title V permits which contain OMET credit provisions. (12)

RESPONSE: The Department will reopen these and pending permits pursuant to N.J.A.C. 7:27-22.25(a) and amend them administratively to comply with N.J.A.C. 7:27-16 and 19. Although subchapter 22 does not provide any time frame for reopening these permits, the Department will complete this process as expeditiously as possible. The Department expects there to be only a handful of former DER credit users whose permits were issued within the past two years or so. (These would represent those who will have a remaining permit term of three or more years from the operative date of the rules April 25, 2004. The Department will no longer issue permits that provide for the use of DER credits. Furthermore, any conditions in a preconstruction permit requiring the use of DER credits would not be carried forward and included in the operating permit. Instead, the Department will include the applicable standard from N.J.A.C. 7:27-16 and 19 and the new compliance deadline available to former DER credit users. The permit will reflect the compliance option chosen by the permittee (from among those available to a former DER credit user) and require the permittee to comply with the approved plan by the date specified in rule. Finally, until recently, permits had included the following general reference to the use of DER credits, even where the permittee was not using or planning on using DER credits to comply with emission limits: "When using discrete

emission reductions (DER credits), comply with N.J.A.C. 7:27-30...." The Department will replace permits containing this language as they come in for renewal with ones that do not contain any references to the OMET program.

33. **COMMENT:** The commenters suggested that the Department require filing of the seven-day notice of intent to use NO_x Budget allowances seven days prior to the start of a company's "use period," not seven days before the start of the year in which the allowances are to be used. (4, 7, 8)

34. **COMMENT:** The Department should allow the seven-day notices of intent to use NO_x Budget allowances to be filed in the applicable calendar year, seven days prior to the start of the calendar quarter for which the allowances are to be used. (11)

RESPONSE to Comments 33 and 34: The Department acknowledges these comments and agrees that it would be sensible to provide more flexibility in the timing of the filing of these notices. Accordingly, on adoption the Department is amending N.J.A.C. 7:27-8.20(b)3 and N.J.A.C. 7:22-22(c)6 to allow the required notices to be filed as late as seven days prior to the start of the calendar quarter for which the allowances are to be used.

35. **COMMENT:** The commenters expressed concern that in many cases the proposed extended compliance timeframes for compliance are unrealistic and not achievable. The three-month deadline for submitting new permit applications may be insufficient since some equipment changes may entail significant design work before an air permit application can be prepared. Likewise, 12 months for compliance followed by another six months to demonstrate compliance are extremely tight timeframes, considering the broad spectrum of engineering, regulatory paperwork and negotiations that will ensue. These timeframes should be extended to at least nine months for application submittals, 24 months for compliance and 30 months for compliance demonstration. (4, 7)

36. **COMMENT:** The commenter supported the extended compliance period, but felt that one year would be insufficient. (3)

37. **COMMENT:** In many cases 12 months would be insufficient for companies to achieve compliance without the use of DER credits, even given that notice of the termination of the program came late in 2002. For example, if a company needs to install additional emissions control equipment to comply without the use of DER credits, the process of design, procurement and installation can take in excess of 12 months. We believe that 24 months would comprise a more reasonable timeframe for companies to achieve compliance without the use of DERs. (10)

RESPONSE to Comments 35, 36 and 37: Facilities that qualify as former DER credit users based on their use of DER credits to comply with N.J.A.C. 7:27-16 or 19 are given up to 12 months to comply with the limits established therein pursuant to N.J.A.C. 7:27-16.1A(g) and 19.3(g). Any former DER credit user who used DER credits to comply with a VOC or NO_x emissions limit established in Subchapters 16 or 19, respectively, and who would continue to require the use of DER credits to comply with that limit, has until April 25, 2005 in which to achieve and thereafter maintain compliance with that limit. The Department has been communicating with the potential former DER credit users it has identified, and is under the impression that all will be able to comply with new compliance deadlines or apply for an AEL within the time frames proposed. Any

source/facility that is concerned that it will have trouble complying within the applicable time frame should discuss its situation with the Department and determine if an AEL is an appropriate solution.

38. **COMMENT:** An extended compliance deadline of one year is not enough time for PSEG Fossil. PSEG had relied on the ability to use DER credits in the 2002 PSEG Fossil settlement, which provides for DER credit use for MEG alerts and upsets. The adopted rule should provide that all DER credits that are contemplated for use by a settling party with the Department or the USEPA shall continue to be valid and available pursuant to the terms of the settlement or consent decree. PSEG should have been included in the Department's list of potential former DER credit users and will provide information concerning its recent use of DER credits for compliance with its NO_x emission-averaging plan and in connection with MEG alerts. (2, 3)

RESPONSE: Paragraph 104 of the Consent Decree to which the commenter refers provides for PSEG to retain DER credits for use in connection with MEG alerts and unexpected dispatch of high-emitting units in an averaging plan. Paragraph 107 requires the retirement of any unused DER credits for these purposes in 2007 (MEG alerts) and 2015 (averaging plan). The repeal of the OMET program makes the use of DER credits unnecessary in the case of MEG alerts and unacceptable after the new compliance dates established by the rulemaking in the case of an averaging plan. That is, this adoption serves to end the OMET program in New Jersey as of the operative date of the rules. Thus, the requirement at N.J.A.C. 7:27-19.24(c) that DER credits be used for the excess NO_x emissions that result from MEG alerts is no longer in effect. Therefore, the commenter's concern regarding the option to use DER credits for MEG alerts established by the Consent Decree is moot. Also, as of the operative date, DER credits will no longer be available for use in meeting emission requirements in N.J.A.C. 7:27-16 and 19. However, it is the Department's understanding based on discussions with PSEG staff that PSEG has made modifications to its facilities that should allow it to comply easily with its averaging plan, without the use of DER credits. The Department will continue to work with this commenter regarding these compliance issues.

39. **COMMENT:** The commenters noted a discrepancy between the proposed rule text in N.J.A.C. 7:27-16 and 19, and the Summary discussion of the proposed changes regarding the extended compliance deadline for "former DER credit users" to demonstrate compliance with the emission requirements in those subchapters. The commenter suggested that the Department should revise the rule text to be consistent with the Summary and provide 24 months to demonstrate compliance. (4, 7)

RESPONSE: The Summary incorrectly referenced the extended deadline for the compliance deadline as 24 rather than 18 months. The use of the number "24" in place of the correct number "18" was a typographical error. The proposed text of the rule, however, is correct and controls.

40. **COMMENT:** The commenter believed the proposed rule amendment allows an excessive amount of additional time for former DER credit users to come into compliance, given the length of time they have known the program is being terminated. It would be reasonable to require source compliance by six months after the operative

date of the rules, unless an individual source can demonstrate the need for additional time. For those sources choosing to repower or install innovative controls, the Department should require source compliance with RACT by 12 months after the operative date of the rules. In addition, if the Department allows compliance with NO_x RACT by using NO_x Budget allowances, it should require compliance with RACT within six months after the operative date of the rules, and only where the source has demonstrated to the State that it can not otherwise comply with the RACT requirements. It would also be appropriate for the Department to begin compliance discussions with these sources now, even before the rules become finally effective. (12)

RESPONSE: The Department acknowledges these comments regarding the extended compliance deadlines but has decided not to shorten any of the compliance deadlines. For one, it would be unreasonable to shorten the basic compliance deadline to anything less than 12 months. A former DER credit user seeking an AEL in order to comply without the use of DER credits would be unable to comply in six months, as it takes longer than that time period to satisfy the public comment requirements for issuing such an alternative emission limit. The deadline of 12 months for an AEL is consistent with the original time frame available for obtaining an AEL under the RACT rules, as is the extended deadline of four years for repowering or installing innovative technology. The Department notes, however, that it is unaware of any former DER credit user interested in pursuing either repowering or installing innovative technology.

The Department has also determined not to modify the rules on adoption to require the use of NO_x Budget allowances before the extended compliance deadline of 12 months. This decision is a matter of fairness and equity to the former DER credit users, and is intended also to protect those who might, in good faith, intend to be in compliance within 12 months, but, failing that, fall back on the option of complying with allowances. Furthermore, the Department has determined that such a significant change in these compliance deadlines would require reproposal of the relevant provisions of the rules, resulting in an even greater extension of both the operative date and the compliance deadline. Even with the most aggressive rulemaking schedule, this would result in an extended compliance deadline later than adopting a 12-month compliance deadline would yield. With respect to repowering, while the Department believes that no former DER credit user is planning to use this compliance option, the Department also believes it is fair and appropriate to include this option with the same compliance period as the original rule. As is indicated elsewhere in this adoption document, the Department has continued compliance discussions with those it has identified as potential former DER credit users and will work with all parties, on a case-by-case basis, to ensure compliance without the use of DER credits.

41. **COMMENT:** As allowed by Connecticut's Vintage Restriction Policy, Connecticut will honor DER credits generated in New Jersey that have previously been approved for use in Connecticut until December 31, 2004, consistent with Federal or State law and the 1995 Memorandum of Understanding Between the States of New Jersey and Connecticut on the Interstate Trading of Discrete and Continuous Verified Emission Reductions. After that, sources in Connecticut will not be authorized to use New Jersey DER credits to comply with Connecticut's NO_x emission limits. (5)

RESPONSE: The Department acknowledges the State of Connecticut's comment advising how it will respond to the termination of the New Jersey OMET program.

42. **COMMENT:** The proposal provides a 12-month time period for “former DER credit users” to achieve compliance with the emission limits in N.J.A.C. 7:27-16 and 19. However, the Department does not appear to provide any time frame for “former DER credit users” who are currently using DER credits to comply with an air permit limit. These companies will also need at least 12 months to replace the use of DER credits. Also, neither Summary nor the proposed rule text at N.J.A.C. 7:27-16 addresses time frames for N.J.A.C. 7:27-16.16 compliance - facilities that are currently using DER credits to comply with this section should be addressed fairly in the rule. (7)

RESPONSE: In providing an extended compliance deadline to all former DER credit users, the Department believes it has accommodated all who have recently and properly used DER credits to meet emission limits. The Department has also addressed compliance with N.J.A.C. 7:27-16.16. Facilities that qualify as former DER credit users based on their use of DER credits to comply with N.J.A.C. 7:27-16.16 are given up to 12 months to comply with the limits established therein pursuant to N.J.A.C. 7:27-16.1A(g), which provides as follows:

- (g) Any former DER credit user who used DER credits to comply with a VOC emissions limit established in this subchapter and who would continue to require the use of DER credits to comply with that limit, shall achieve compliance with that limit by April 2005 and maintain compliance with that limit thereafter.

The Department did not modify any of the deadlines established at N.J.A.C. 7:27-16.16 because none of those deadlines relate to compliance with the limits set forth at N.J.A.C. 7:27-16.16(c) and (d).

43. **COMMENT:** N.J.A.C. 7:27-19.27(b) should reflect that not all NO_x RACT limits are expressed in terms of pounds per million Btu. (7)

RESPONSE: The Department acknowledges that for some former DER credit users complying with NO_x RACT requirements for engines, pounds per million Btu would not be the correct form of measurement to determine the allowable NO_x emission for the equipment or control apparatus in question. Accordingly, in response to comments, and to assist any former DER credit users choosing to comply with NO_x RACT requirements for engines by using NO_x Budget allowances, the Department has modified N.J.A.C. 7:27-19.27(b)1 and 2 on adoption to include directions on how to convert to pounds per million Btu.

44. **COMMENT:** It is not clear from the proposal how sources that may have used credits prior to 2000, or that are banking credits, are complying with RACT. (12)

RESPONSE: Because the Department has not extended the deadlines for compliance for these sources, it expects any such sources that are not currently in compliance with RACT requirements to ensure that they will be in compliance when these rules become operative. Banked credits cannot be used to comply with RACT requirements after April 25, 2004. However, if a source has been complying without using DER credits since 2000, presumably it will not require the use of DER credits now or in the future.

45. **COMMENT:** The commenter has been operating under a permit that provided that DER credits would be used to enable it to meet state of the art (SOTA) requirements for the equipment in question. Without the opportunity to use DER credits in this way, the commenter stated it would need an AEL (and time to obtain that AEL) in order to comply with the applicable requirements for this equipment. (1)
RESPONSE: The Department is working with this commenter to address its concerns as it makes the transition from the OMET program. The Department notes that this rule does provide an extended compliance deadline of one year from the operative date, during which time former DER credit users can work with the Department, as necessary, to pursue the option of an AEL.
46. **COMMENT:** The commenter asked if it would be able to operate its Kenilworth facility under the terms of its previously-approved alternative VOC control plan (or AEL). This AEL was approved before the revision to the OMET program rules that added the requirement that DER credits be used in conjunction with AELs. The commenter believes it would be authorized to execute its alternative control plan if OMET is terminated, without seeking an alternative control strategy. The commenter also requested that it be considered a former DER credit user, since it submitted a Notice of Intent to use DER credits in December 2002. (6)
RESPONSE: The commenter is correct. The repeal of the OMET program means that it is no longer necessary for this commenter to use DER credits in conjunction with an approved AEL. Since the commenter already has an approved AEL, it presumably will not need to seek compliance alternatives as a former DER credit user. Should this not be the case, however, the Department staff will further review the history of the commenter's participation in the OMET program.
47. **COMMENT:** Should an individual party with concerns about timely installing more advanced control equipment review the time line for procurement and installation with the Department? (10)
RESPONSE: The Department already works with companies that have applied permits to make a modification. As part of its permit review process, the Department tries to accommodate a permittee's time frame to ensure that it can comply as expeditiously as possible.
48. **COMMENT:** The proposed changes to N.J.A.C. 7:27A-3.10 will eliminate the option to use DER credits to offset a penalty. Using some type of emission credits for the settlement of all or a portion of a penalty is often an attractive option for both the Department and the regulated entity. The Department should not eliminate this option. In place of DER credits, the Department should consider allowing retirement of N.J.A.C. 7:27-18 credits and NO_x Budget allowances in lieu of penalties. (7)
RESPONSE: The Department notes that under the OMET program some settlements of penalty actions included the retirement of DER credits, but this use was in addition to an imposed monetary penalty, not in lieu of a penalty, or as an offset. Similarly, the retirement of NO_x Budget allowances or emission offsets would be allowed as part of an enforcement settlement.

49. COMMENT: The commenters supported the Department's decision not to take enforcement action or assess penalties against users of DER credits and hoped the Department will work aggressively to ensure that the USEPA, which has made no such commitment, will not take enforcement action either. (4, 7)

RESPONSE: The USEPA has commented that it will work with New Jersey on the process of terminating the OMET program. In its conversations with the USEPA, the Department has urged the USEPA to refrain from taking any enforcement action based on the use of DER credits until sources have had a chance to comply under the new rules.

50. COMMENT: Plants now exceeding their permit limits should be coming into compliance as quickly as possible. They shouldn't be fined or found to be in violation, but their coming into compliance will help everyone in New Jersey breathe easier. (14)

RESPONSE: The Department will be working with former DER credit users as they make the transition to compliance without the use of DER credits and agrees that this should improve air quality and result in an environmental benefit for New Jerseyans.

Summary of Agency-Initiated Changes:

The Department has made the following changes on adoption to improve the clarity of the rules:

At N.J.A.C. 7:27-8.3(o), 19.27(a), 22.3(tt) and 31.6(a), the Department clarified that the use of NO_x Budget allowances by former DER credit users was intended to be limited to those who had used DER credits to meet NO_x RACT limits and who would need to use NO_x Budget allowances in place of DER credits after the OMET program ends. In general terms, the proposal Summary articulates the Department's intent to offer alternative compliance mechanisms, including the use of NO_x Budget allowances, only to those who had been using DER credits within the past three years ("former DER credit users") and who, after the OMET termination, would no longer be able to meet the VOC or NO_x RACT limits for which they had been using the DER credits.

The proposal clearly stated that it is the intention of the Department to terminate the OMET program, "but in such a way as to provide those who have used DER credits in good faith with a realistic opportunity to identify and implement *another method of compliance*." 35 N.J.R. 3487 (emphasis added). The Department further stated its intention to make extended compliance options available "only to those who still need them." 35 N.J.R. 3487. The OMET termination rules are intended to assist those who used DER credits in the last three years and who "will not comply with VOC or NO_x RACT requirements absent the OMET program." 35 N.J.R. 3488.

In the description of the proposed changes to N.J.A.C. 7:27-19.27, the Department stated, "The Department proposes this new section to establish the procedure for a former DER credit user who wishes to use NO_x Budget allowances to meet the NO_x RACT requirements of subchapter 19, *if not meeting these requirements by the proposed extended compliance*

deadline.” 35 N.J.R. 3490 (emphasis added.) Neither this descriptive language nor the proposed text at N.J.A.C. 7:27-19.27(a) expressly restricts use of NO_x Budget allowances to those former DER credit users who had used DER credits to meet NO_x RACT limits and who would need to use NO_x Budget allowances in place of DER credits after the OMET program ends. (The changes on adoption would correct this inadvertent omission.) However, the reference in the italicized text to those DER credit users not meeting NO_x RACT requirements by the extended compliance deadline clearly shows the Department’s intent to restrict the alternative compliance option of using NO_x Budget allowances to those users who would qualify for the extended compliance deadline.

The qualifying language to be added on adoption to N.J.A.C. 7:27-8.3(o), 19.27(a), 22.3(tt) and 31.6(a) was proposed at N.J.A.C. 7:27-19.3(g) in connection with who could take advantage of the other compliance options, as follows: “Any former DER credit user who used DER credits to comply with a NO_x emission limit under this subchapter, *and who would continue to require the use of DER credits to comply with that limit...*” 35 N.J.R. 3496 (emphasis added).

The language added on adoption makes the text at N.J.A.C. 7:27-8.3(o), 19.27(a), 22.3(tt) and 31.6(a) consistent with the limiting language at N.J.A.C. 7:27-19.3(g).

At N.J.A.C. 7:27-16.1, the Department is conforming the text of the introductory paragraph, that was not proposed for amendment but contained typographic errors, to the current Code text. In addition, the Department is correcting a typographic error in this paragraph as currently in the Code that occurred in the prior rulemaking affecting this section (see 34 N.J.R. 2489(a) and 35 N.J.R. 2509(a)), in which, with no amendment proposed for the paragraph, the phrase “when used in this subchapter” appeared as “as used in this subchapter.” The appearance of the phrase “when used in this subchapter” in this proposal is, therefore, retained.

The Department amended the new provisions at N.J.A.C. 7:27-16.1A(h) and N.J.A.C. 7:27-19.3(h) to state more directly and clearly that the compliance options set forth at N.J.A.C. 7:27-16.1A(g) and 19.3(g), respectively, do not apply to a former DER credit user where such application would extend the compliance deadline set forth in an Administrative Consent Order that does not require the use of DER credits entered into by the former DER credit users and the Department prior to January 1, 2003.

At N.J.A.C. 7:27A-3.10(m), the Department is correcting a typographic error, conforming the text published in the proposal to the current Code text.

The Department corrected some grammatical and stylistic errors in the definition of “potential to emit” at N.J.A.C. 7:27-8.1 and N.J.A.C. 7:27-22.1, and in N.J.A.C. 7:27-16.1A(g) and N.J.A.C. 7:27-22.3(tt).

Federal Standards Statement

Executive Order No. 27 (1994) and N.J.S.A. 52:14B-1 et seq. (P.L. 1995, c.65), require State agencies which adopt, readopt or amend State regulations that exceed any Federal

standards or requirements to include in the rulemaking document a Federal standards analysis. As the Department explained in the Phase 2 OMET proposal Federal Standards Statement, the USEPA has provided in its Economic Incentive Program (EIP) rules (codified at 40 CFR Part 51, Subpart U) that a State may elect to adopt an economic incentive program such as the OMET program. New Jersey's OMET program was consistent with the Federal EIP rules. Furthermore, the repeal of New Jersey's OMET program rules will not impose standards or requirements that exceed any Federal standards or requirements. Accordingly, neither Executive Order 27 (1994) nor N.J.S.A. 52:14B-23 requires a cost-benefit analysis.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. GENERAL PROVISIONS

7:27-1.32 Request for an adjudicatory hearing

- (a) Any applicant, registrant, or permittee may request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1 regarding a decision made by the Department to:
Recodify existing i. - iii. as 1. - 3. (No change in text.)
4. Deny the request for a stay under N.J.A.C. 7:27-1.33.
- (b)-(e) (No change.)

SUBCHAPTER 8. PERMITS AND CERTIFICATES FOR MINOR FACILITIES (AND MAJOR FACILITIES WITHOUT AN OPERATING PERMIT)

7:27-8.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

...

"Former DER credit user" means one who used Discrete Emission Reduction (DER) credits in the three years immediately preceding August 4, 2003 in compliance with the Open Market Emissions Trading Program rules then promulgated at N.J.A.C. 7:27-30 to satisfy the requirements of N.J.A.C. 7:27-16 or 19.

...

"Potential to emit" means the same as that term is defined by the EPA at 40 CFR 70.2 or any subsequent amendments thereto. In general, the potential to emit is the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including any limitation on fugitive emissions as a result of any applicable requirement, control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design, if the limitation is Federally enforceable. Unless otherwise indicated, source-related fugitive emissions shall be included in the determination of potential to emit. However, the determination shall not include the holding by the owner or operator of either emission reductions that are banked pursuant to N.J.A.C. 7:27-18.8 *[,]* or NO_x budget allowances allocated pursuant to N.J.A.C. 7:27-31.7.

...

7:27-8.3 General provisions

- (a) -(j) (No change.)
(k)-(l) (Reserved)

(m)-(n) (No change.)

(o) On and after *[(the operative date of this rulemaking)]* **April 25, 2004**, no permittee may use DER credits to comply with a VOC or NO_x permit limit established pursuant to this subchapter. Notwithstanding (c) above, a former DER credit user who used DER credits to comply with a NO_x RACT limit established pursuant to N.J.A.C. 7:27-19 ***and who would continue to require the use of DER credits to comply with that limit***, may, on and after *[(the operative date of this rulemaking)]* **April 25, 2004** use NO_x budget allowances, as defined by the provisions of N.J.A.C. 7:27-31, to comply with that NO_x RACT limit provided that:

[i.] **1.*** The use of such NO_x budget allowances conforms with the requirements at N.J.A.C. 7:27-19.27; and

[ii.] **2.*** The permittee files a seven-day-notice as provided at N.J.A.C. 7:27-8.20.

7:27-8.4 Applications

(a)-(q) (No change.)

(r) (Reserved)

(s) (No change.)

7:27-8.17 Changes to existing permits and certificates

(a)-(d) (No change.)

7:27-8.20 Seven-day-notice changes

(a) (No change.)

(b) A seven-day-notice may be used for the following:

1.-2. (No change.)

3. Notice of intent to use NO_x budget allowances, as defined by the provisions of N.J.A.C. 7:27-31, by a former DER credit user to comply with a NO_x RACT limit in accordance with N.J.A.C. 7:27-19.27. A notice of intent to use NO_x budget allowances shall be filed at least seven days before the start of the calendar *[year]* **quarter** for which the NO_x budget allowances are to be used.

(c)-(h) (No change.)

7:27-8.25 Special provisions for pollution control equipment or pollution prevention process modifications

(a)-(c) (No change.)

(d) An applicant who acts under the authority of this section assumes all risks for the actions. If an applicant pursues activities under this section, and the Department does not approve the activities as proposed in the application, the applicant may be required to reverse the activities, and may be liable for penalties for the activities under (h) below.

(e)-(h) (No change.)

7:27-8.28 Delay of testing

(a)-(b) (No change.)

SUBCHAPTER 16. CONTROL AND PROHIBITION OF AIR POLLUTIONN BY VOLATILE ORGANIC COMPOUNDS

7:27-16.1 Definitions

The following words and terms, when used in this subchapter, *[shall]* have the **following** meanings, unless the context clearly indicates otherwise.

...

"Former DER credit user" means one who used Discrete Emission Reduction (DER) credits in the three years immediately preceding August 4, 2003 in compliance with the Open Market Emissions Trading Program rules then promulgated at N.J.A.C. 7:27-30 to satisfy the requirements of N.J.A.C. 7:27-16 or 19.

...

7:27-16.1A Purpose, scope, applicability, and severability

(a)-(e) (No change)

- (f) On and after *[(the operative date of this rulemaking)]* **April 25, 2004***, no owner or operator of a source operation subject to a VOC emissions limit under this subchapter may comply with the limit through the use of discrete emission reduction (DER) credits.
- (g) Any former DER credit user who used DER credits to comply with a VOC emissions limit established in this subchapter*,* and who would continue to require the use of DER credits to comply with that limit, shall achieve compliance with that limit by *[(12 months after the operative date of this rulemaking)]* **April 25, 2005*** and maintain compliance with that limit thereafter. In the case of these former DER credit users, only, deadlines related to the VOC emissions limit compliance deadline that are set forth elsewhere in this subchapter are modified as follows:
 - 1. The permit application submission deadline established at N.J.A.C. 7:27-16.7 (k)1 is *[(three months after the operative date of this rulemaking)]* **July 25, 2004***;
 - 2. The compliance deadline established at N.J.A.C. 7:27-16.7(k)2 is *[(12 months after the operative date of this rulemaking)]* **April 25, 2005***;
 - 3. The compliance deadline established at N.J.A.C. 7:27-16.8(d) is *[(12 months after the operative date of this rulemaking)]* **April 25, 2005***;
 - 4. The compliance demonstration deadline established at N.J.A.C. 7:27-16.8(e) is *[(18 months after the operative date of this rulemaking)]* **October 25, 2005***;
 - 5. The compliance deadline established at N.J.A.C. 7:27-16.9(d) is *[(12 months after the operative date of this rulemaking)]* **April 25, 2005***;
 - 6. The compliance demonstration deadline established at N.J.A.C. 7:27-16.9(e) is *[(18 months after the operative date of this rulemaking)]* **October 25, 2005***;

7. The compliance deadline established at N.J.A.C. 7:27-16.10(c) is *[(12 months after the operative date of this rulemaking)]* **April 25, 2005**;
 8. The compliance demonstration deadline established at N.J.A.C. 7:27-16.10(d) is *[(18 months after the operative date of this rulemaking)]* **October 25, 2005**;
 9. The compliance deadline established at N.J.A.C. 7:27-16.11(c) is *[(12 months after the operative date of this rulemaking)]* **April 25, 2005**;
 10. The compliance demonstration deadline established at N.J.A.C. 7:27-16.11(d) is *[(18 months after the operative date of this rulemaking)]* **October 25, 2005**;
 11. The compliance deadline established at N.J.A.C. 7:27-16.13(a) is *[(12 months after the operative date of this rulemaking)]* **April 25, 2005**;
 12. The source operation demonstration submission deadline established at N.J.A.C. 7:27-16.17(b)1 is *[(three months after the operative date of this rulemaking)]* **July 25, 2004**;
 13. The compliance deadline established at N.J.A.C. 7:27-16.17(b) is *[(12 months after the operative date of this rulemaking)]* **April 25, 2005**;
 14. The emission reduction deadline established at N.J.A.C. 7:27-16.17(f)2 *[(12 months after the operative date of this rulemaking)]* **April 25, 2005**;
 15. The Control Measure Plan preparation deadline established at N.J.A.C. 7:27-16.2(a) is *[(three months after the operative date of this rulemaking)]* **July 25, 2004**;
 16. The emission reduction deadline established at N.J.A.C. 7:27-16.21(b) is *[(12 months after the operative date of this rulemaking)]* **April 25, 2005**; and
 17. The compliance demonstration deadline established at N.J.A.C. 7:27-16.23(b) and (c) is *[(18 months after the operative date of this rulemaking)]* **October 25, 2005**.
- (h) The provisions of (g) above do not apply to a former DER credit user***[who used]*** **1. Whose only use of*** DER credits **was*** in satisfaction of either **the*** settlement of a penalty imposed pursuant to N.J.A.C. 7:27A-3.10 or an Administrative Consent Order entered into with the Department **[,]*** **;*** or **[to a former DER credit user who, prior to January 1, 2003, entered into]*** **2. To extend a deadline contained in*** an Administrative Consent Order **(ACO)*** **entered into*** with the Department **[to allow VOC-emitting units to operate under an alternative VOC control plan without the requirement to hold]*** **prior to January 1, 2003, unless compliance with the ACO requires the use of*** VOC DER credits.
- (i) (No change in text.)

7:27-16.17 Facility-specific VOC control requirements

- (a)-(l) (No change.)
- (m) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of the source operation(s) necessary to minimize any adverse impact upon human health, welfare and the environment.
- (n)-(t) (No change.)

SUBCHAPTER 18. CONTROL AND PROHIBITION OF AIR POLLUTION FROM NEW OR ALTERED SOURCES AFFECTING AMBIENT AIR QUALITY (EMISSION OFFSET RULES)

7:27-18.11 (Reserved)

SUBCHAPTER 19. CONTROL AND PROHIBITION OF AIR POLLUTION FROM OXIDES OF NITROGEN

7:27-19.1 Definitions

The following words and terms, when used in this subchapter, have the meanings given below unless the context clearly indicates otherwise.

...

"Former DER credit user" means one who used Discrete Emission Reduction (DER) credits in the three years immediately preceding August 4, 2003 in compliance with the Open Market Emissions Trading Program rules then promulgated at N.J.A.C. 7:27-30 to satisfy the requirements of N.J.A.C. 7:27-16 or 19.

...

7:27-19.3 General provisions

(a)-(f) (No change.)

(g) On and after *[(the operative date of this rulemaking)]* ***April 25, 2004***, no owner or operator of a source operation subject to a NO_x emissions limit under this subchapter may comply with the limit through the use of discrete emission *[reductions (DERs)]* ***reduction (DER) credits***. Any former DER credit user who used DER credits to comply with a NO_x emissions limit under this subchapter and who would continue to require the use of DER credits to comply with that limit, shall achieve compliance with that limit by *[(12 months after the operative date of this rulemaking)]* ***April 25, 2005*** and maintain compliance with that limit thereafter. In the case of a former DER credit user, only, deadlines related to the NO_x emissions limit compliance deadline that are set forth elsewhere in this subchapter are modified as follows:

1. The emission limitations operative date established at (b) above is *[(12 months after the operative date of this rulemaking)]* ***April 25, 2005***;
2. The permit application submission deadline established at (d)1 above is *[(three months after the operative date of this rulemaking)]* ***July 25, 2004***;
3. The proposed NO_x control plan submission deadline established at (d)2 above and N.J.A.C. 7:27-19.13(b) is *[(three months after the operative date of this rulemaking)]* ***July 25, 2004***;
4. The NO_x control plan implementation deadline established at N.J.A.C. 7:27-19.13(n) is *[(12 months after the operative date of this rulemaking)]* ***April 25, 2005***;
5. The compliance demonstration deadline established at N.J.A.C. 7:27-19.15(b) is *[(18 months after the operative date of this rulemaking)]* ***October 25, 2005***;

6. The application for approval of a repowering plan deadline established at N.J.A.C. 7:27-19.21(b) is *[(three months after the operative date of this rulemaking)]* ***July 25, 2004***;
 7. The completion of repowering date referenced at N.J.A.C. 7:27-19.21(c)2v and (d)4 is no later than *[(four years after the operative date of this rulemaking)]* ***April 25, 2008***;
 8. The May 31, 1995 deadlines established at N.J.A.C. 7:27-19.21(e)1, 4 and 6 are *[(12 months after the operative date of this rulemaking)]* ***April 25, 2005***;
 9. The operation cessation deadline established at N.J.A.C. 7:27-19.21(e)10 is *[(four years after the operative date of this rulemaking)]* ***April 25, 2008***;
 10. The innovative control technology application deadline established at N.J.A.C. 7:27-19.23(b) is *[(three months after the operative date of this rulemaking)]* ***July 25, 2004***;
 11. The implementation of the innovative control technology date referenced at N.J.A.C. 7:27-19.23(c)4, (d)2iii and 3 is no later than *[(four years after the operative date of this rulemaking)]* ***April 25, 2008***;
 12. The May 31, 1995 deadlines established at N.J.A.C. 7:27-19.23(d)2iv, (e)1, 4 and 6 are *[(12 months after the operative date of this rulemaking)]* ***April 25, 2005***; and
 13. The May 1, 1999 operation cessation deadline established at N.J.A.C. 7:27-19.23(e)9 does not apply to a former DER credit user. Instead, by *[(four years after the operative date of this rulemaking)]* ***April 25, 2008***, the former DER credit user shall either implement the innovative control technology for the combustion source included in its innovative control technology plan or that source must comply with the NO_x emissions limit under this subchapter.
- (h) The extension of the NO_x RACT compliance deadline to *[(12 months after the operative date of this rulemaking)]* ***April 25, 2005*** at (g) above and the provisions of (g)1 through 13 above do not apply to a former DER credit user *[(who used)]* ***:**
- *1. Whose only use of*** DER credits ***was*** in satisfaction of either ***the*** settlement of a penalty imposed pursuant to N.J.A.C. 7:27A-3.10 or an Administrative Consent Order entered into with the Department *[(, or to a former DER credit user who,)]* prior to January 1, 2003 *[(, entered into)]* ***:**
 - *2. To extend a deadline contained in*** an Administrative Consent Order ***(ACO) entered into*** with the Department *[(to allow NO_x emitting units to operate under an alternative maximum allowable NO_x emission rate without the requirement to hold)]* ***prior to January 1, 2003, unless compliance with the ACO requires the use of*** NO_x DER credits.

Recodifying existing (h) - (i) as (i) - (j). (No change in text.)

7:27-19.13 Facility-specific NO_x emissions limits

(a)-(h) (No change.)

- (i) As a condition of an approval issued under this section, the Department may impose requirements upon the operation of any of the equipment or source operations at the

subject facility listed pursuant to (b)1 or (c)1 above necessary to minimize any adverse impact upon human health, welfare and the environment.

(j)-(p) (No change.)

7:27-19.23 Phased compliance – use of innovative control technology

(a)-(d) (No change.)

(e) An owner or operator who has obtained the Department's approval of an innovative control technology plan shall:

1.-7. (No change.)

8. Incorporate advances in the art of air pollution control into each source included in the plan, as required in the preconstruction permit for the replacement equipment; and

9. If the innovative control technology for any combustion source included in the plan is not implemented by May 1, 1999, cease operating the combustion source by May 1, 1999.

(f) - (h) (No change.)

7:27-19.24 MEG alerts

(a) (No change.)

(b) Within two working days after the end of the MEG alert, the electric generating utility shall notify the Department by way of a report confirming the occurrence of the MEG alert. The electric generating utility shall certify the report in accordance with N.J.A.C. 7:27-8.24. In the report, the electric generating utility shall include the following information:

1.-5. (No change.)

6. For each electric generating unit listed in 1 above, the amount by which the unit's NO_x emissions (expressed in pounds) during the MEG alert exceeded the maximum quantity of NO_x emission allowed under this chapter. The excess NO_x emissions shall be calculated as follows for each day that the MEG alert continued:

$$E = (ER - M) \times H$$

where:

- i. E is the excess NO_x emissions from the electric generating unit;
- ii. ER is the average rate at which the electric generating unit emitted NO_x during the day of the MEG alert, determined in accordance with N.J.A.C. 7:27-19.15(a) and expressed in lb/MMBTU;
- iii. M is the most stringent applicable NO_x emissions limit established under this chapter; and
- iv. H is the actual daily heat input to the electric generating unit during the MEG alert, expressed in MMBTU; and

7. A copy of the calculations performed under (b)6 above.

7:27-19.27 Use of NO_x budget allowances by a former DER credit user

- (a) A former DER credit user ***who used DER credits to comply with a NO_x emissions limit under this subchapter, and who would continue to require the use of DER credits to comply with that limit,*** may use NO_x budget allowances, as defined by the provisions of N.J.A.C. 7:27-31, to achieve compliance with the applicable NO_x RACT emission limits of this subchapter.
- (b) The number of NO_x budget allowances to be retired during any given calendar year pursuant to (a) above shall be determined as follows:
1. Determine the allowable NO_x emissions* for the equipment or control apparatus*[,] for the calendar year in question by calculating the quantity of NO_x emissions in tons per year (tpy) which would be allowed for the equipment or control apparatus. *[Allowable]* ***The allowable*** NO_x emissions for a single fuel shall be the total BTU (higher heating value) burned in the calendar year times the maximum allowable NO_x emission rate, in pounds per million BTU, for the equipment or control apparatus in question, converted to tons per year (by dividing by 2,000). ***The allowable NO_x emissions for a stationary internal combustion engine shall be the total number of horsepower hours produced in the calendar year times the maximum allowable NO_x emission rate, in grams per horsepower hour, for the equipment or control apparatus in question, converted to tons per year (by dividing by 908,000).*** Maximum allowable NO_x emission rates are codified at N.J.A.C. 7:27-19.4(a), Table 1; 19.5(a), Table 2; 19.5(b), Table 3; 19.7(b), Table 4; *[and]* 19.7(c), Table 5 ***and N.J.A.C. 7:27-19.8(a), (b) and (c)***. If more than one fuel is burned, determine the allowable emission separately for each fuel and then sum these allowable emissions;
 1. Determine the actual NO_x emissions, in tons, for the equipment or control apparatus for the calendar year in question as follows:
 - i. For a facility using a continuous emissions monitoring system to demonstrate compliance with the requirements of this subchapter pursuant to N.J.A.C. 7:27-19.15(a)1, integrate the measured concentration with a stack gas volumetric flow rate monitor, corrected for oxygen concentration and temperature, and convert it to cumulative tons. Use only instrumentation and methodology approved by the Chief of the Department's Bureau of Technical Services, whose address is set forth at N.J.A.C. 7:27-19.18(m); *[or]*
 - ii. For a facility using the average of three one-hour tests to demonstrate compliance with the requirements of this subchapter pursuant to N.J.A.C. 7:27-19.15(a)2, multiply the measured average pounds per hour by the operating hours per calendar year, or multiply the measured average emission factor in pounds per million BTU (higher heating value) by the measured annual fuel use expressed in million BTU per calendar year, based on the higher heating value of the fuel; ***or**
 - iii. **For a stationary internal combustion engine, multiply the measured average emission rate in grams per horsepower hour by the measured annual horsepower hours generated by the engine, then convert into tons by dividing by 908,000;***

2. Subtract the allowable NO_x emissions determined in (b)1 above from the actual emissions determined in (b)2 above to yield the quantity of excess NO_x emissions, in tons, from the equipment or control apparatus, that occurred during the calendar year in question; and
 3. Take the quantity of excess NO_x emissions calculated under (b)3 above (expressed in tons) and round it up to the next whole number of tons to yield the number of NO_x allowances to be retired.
- (c) By April 1 of the year following the calendar year when the NO_x budget allowances were used, the former DER credit user using NO_x budget allowances to comply with the applicable NO_x RACT emission limits set forth in this subchapter shall provide the Department with documentation demonstrating that the appropriate number of allowances has been retired, along with the supporting calculations described in (b) above, using the form set forth at the Appendix to this subchapter, promulgated and incorporated herein by reference.

APPENDIX
New Jersey Department of Environmental Protection
Notice of Use of NO_x Budget Allowances

A. General Information

Name of User: _____

User Address: _____

County: _____

User Type of Business: _____

Air Program Interest No. _____

Equipment Permit No. _____

Location of the equipment at the facility: _____

Name of Contact Person: _____

Telephone Number: _____

E-Mail Address: _____

B. Allowance Information

Calendar Year NO_x Budget Allowances Were Used: _____

Maximum Quantity of Excess Emissions: _____

Number of NO_x Budget Allowances Needed: _____

Specify the NO_x Budget Allowance Serial Number(s): _____

C. Supporting Documentation: This submission is not complete without attached documentation of the calculation of the number of NO_x Budget Allowances Needed using the protocol set forth at N.J.A.C. 7:27-19.27(b).

Confirm attachment of supporting documentation and number of pages: _____

D. Certification by Source Owner or Operator

I certify under penalty of law that I believe the information provided in this Notice of Use, is true, accurate and complete. I am aware that there are significant civil and criminal penalties, including the possibility of fine or imprisonment or both for submitting false, inaccurate or incomplete information.

Signed: _____

Title: _____

This form (and all attachments) are to be submitted to the Department at the applicable address listed below:

If the source is located in Mercer, Middlesex, Monmouth, Ocean or Union County:

Department of Environmental Protection

Air Compliance & Enforcement

Central Regional Office

Horizon Center, PO Box 407

Trenton, New Jersey 08625-0407

If the source is located in Hunterdon, Morris, Passaic, Somerset or Warren County:

Department of Environmental Protection

Air Compliance & Enforcement

Northern Regional Office

1259 Route 46 East, Building 2

Parsippany-Troy Hills, New Jersey 07054-4191

If the source is located in Bergen, Essex, or Hudson County:

Department of Environmental Protection

Air Compliance & Enforcement

Metro Regional Office

2 Babcock Place

West Orange, New Jersey 07052-5504

If the facility is located in Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester or Salem County:

Department of Environmental Protection

Air Compliance & Enforcement

Southern Regional Office

2 Riverside Drive, Suite 201

Camden, New Jersey 08102

SUBCHAPTER 22. OPERATING PERMITS

7:27-22.1 Definitions

The following words and terms, when used in this subchapter, have the meanings given below unless the context clearly indicates otherwise.

...

"Former DER credit user" means one who used Discrete Emission Reduction (DER) credits in the three years immediately preceding August 4, 2003 in compliance with the Open Market Emissions Trading Program rules then promulgated at N.J.A.C. 7:27-30 to satisfy the requirements of N.J.A.C. 7:27-16 or 19.

...

"Potential to emit" means the same as that term is defined by the EPA at 40 CFR §70.2 or any subsequent amendments thereto. In general, the potential to emit is the maximum aggregate capacity of a source operation or of a facility to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of a source operation or a facility to emit an air contaminant, including any limitation on fugitive emissions as a result of any applicable requirement, control apparatus, and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, shall be treated as part of its design, if the limitation is Federally enforceable. Unless otherwise indicated, fugitive emissions shall be included in the determination of potential to emit. However, the determination shall not include the holding *[of any of the following]* by the owner or operator*[:]* **of either*** emission reductions that are banked pursuant to N.J.A.C. 7:27-18.8 or NO_x **budget*** allowances allocated pursuant to N.J.A.C. 7:27-31.7.

...

7:27-22.3 General provisions

(a)-(ss) (No change.)

(tt) On and after *[(the operative date of this rulemaking)]* **April 25, 2004***, no permittee may use DER credits to comply with a VOC or NO_x permit limit established pursuant to this subchapter. Notwithstanding (qq) above, a former DER credit user who used DER credits to comply with a NO_x RACT limit established pursuant to N.J.A.C. 7:27-19, **and who would continue to require the use of DER credits to comply with that limit***, may, on and after *[(operative date of this rulemaking)]* **April 25, 2004***, use NO_x budget allowances allocated for calendar year 2003 or later, as defined by the provisions of N.J.A.C. 7:27-31, to comply with that NO_x RACT limit provided that:
[i.] **1.***The use of such NO_x budget allowances conforms with the requirements at N.J.A.C. 7:27-19.27; and
[ii.] **2.***The permittee files a seven-day-notice of intent to use NO_x budget allowances as provided at N.J.A.C. 7:27-22.22, for each calendar year for which such NO_x budget allowances are used.

(uu) (Reserved)

(vv) (No change.)

7:27-22.16 Operating permit contents

(a)-(i) (No change.)

(j) An operating permit may contain provisions for emissions trading program(s) pursuant to N.J.A.C. 7:27-22.28A, such as a facility-specific emissions averaging program within one or more groups of source operations, pursuant to N.J.A.C. 7:27-22.28B.

(k)-(t) (No change.)

7:27-22.18 Source emissions testing and monitoring

(a)-(l) (No change.)

7:27-22.22 Seven-day-notice changes

(a)-(b) (No change.)

(c) Except as provided at (b) above, any of the following changes may be made as seven-day-notice changes, pursuant to the procedures of this section:

1.-3. (No change.)

4. Relocation of a temporary facility to a site not specifically authorized in the operating permit, unless air quality simulation modeling or risk assessment is required pursuant to N.J.A.C. 7:27-22.8(a)3;

4. Any change to a significant source operation which:

i. - ii. (No change.)

iii. Does not cause the emission of a new air contaminant not specified in the operating permit; or

5. Notice of intent to use NO_x budget allowances, as defined by the provisions of N.J.A.C. 7:27-31, by a former DER credit user to comply with a NO_x RACT limit in accordance with N.J.A.C. 7:27-19.27. A notice of intent to use NO_x budget allowances shall be filed at least seven days before the start of the calendar *[year]* ***quarter*** for which the NO_x budget allowances are to be used.

(d) In addition to the items listed at (c) above, a seven-day-notice change may be used for the following, pursuant to the procedures of this section:

1. A change to an existing significant source operation, or construction or installation of any new significant source operation, at a facility with an approved facility-wide permit, as defined at N.J.A.C. 7:27-22.1, provided that:

i.-ii. (No change.)

iii. The proposed change, construction, or installation does not cause any of the following:

(1)-(3) (No change.)

(4) The addition of a new production process.

(e)-(h) (No change.)

(i) (Reserved)

(j) No permittee shall make a change at a facility pursuant to this section unless the written notice of the change is submitted to both the Department and EPA at least seven days before the change is made, and all other requirements of this Chapter are met.

(k)-(o) (No change.)

7:27-22.28A Emissions trading

(a) (No change.)

(b) A permittee may implement any of the following emissions trading programs, if the Department has approved the program and incorporated it into the operating permit:

1.-3. (No change.)

(c)-(h) (No change.)

7:27-22.30 Renewals

(a)-(c) (No change.)

(d) To be deemed administratively complete, an application for renewal of an operating permit shall include all information required by the application form for the renewal and the following:

1.-4. (No change.)

5. A summary of the results of any source emissions testing or monitoring required by the operating permit that has been performed since the date of issuance of the most recent operating permit for the source operations included in the operating permit; and

6. Proposed draft operating permit conditions that:

i. (No change.)

ii. Reflect any change to the facility or its operations proposed for inclusion in the renewed operating permit.

SUBCHAPTERS 28 THROUGH 30. (RESERVED)

SUBCHAPTER 31. NO_x BUDGET PROGRAM

7:27-31.2 Definitions

The following words, terms, and abbreviations used in this subchapter have the following meanings, unless the context clearly indicates otherwise:

...

"Former DER credit user" means one who used Discrete Emission Reduction (DER) credits in the three years immediately preceding August 4, 2003 in compliance with the Open Market Emissions Trading Program rules then promulgated at N.J.A.C. 7:27-30 to satisfy the requirements of N.J.A.C. 7:27-16 or 19.

...

7:27-31.3 Applicability and general provisions

(a)-(k) (No change.)

(l) Allowances are valid only for the purposes of meeting the requirements of this subchapter and cannot be used to authorize the exceedance of the limitations of a permit or of another applicable rule or regulation except as provided at N.J.A.C. 7:27-19.27 and 31.6. This provision does not prohibit the use of allowances that are issued through this subchapter for the purpose of complying with the provisions of another State's rules implementing either the OTC MOU or the USEPA SIP Call at 40 CFR 51.121.

(m)-(o) (No change.)

7:27-31.6 Use of allowances by former users of DER credits

- (a) A former DER credit user who used DER credits to comply with a NO_x RACT limit established pursuant to N.J.A.C. 7:27-19, ***and who would continue to require the use of DER credits to comply with that limit,*** may, on and after ***[(the operative date of this rulemaking)]* *April 25, 2004,*** use allowances to comply with that NO_x RACT limit provided that:
1. The use of such allowances conforms with the requirements at N.J.A.C. 7:27-19.27; and
 2. The permittee files a seven-day-notice of its intent to use allowances, as provided at N.J.A.C. 7:27-8.20 and 22.22.

7:27-31.8 Claims for incentive allowances

- (a)-(c) (No change.)
(d) (Reserved)
(e) (No change.)
(f) A claim for incentive allowances shall include:
- 1.-3. (No change.)
 4. Citation of the unique identification number assigned to a general account held by the claimant in the NATS;
 5. (Reserved); and
 6. (No change.)
- (g)-(i) (No change.)

7:27-31.12 Early reductions

- (a)-(b) (No change.)
(c) A claim shall include the following information:
- 1.-10. (No change.)
 11. One of the following:
 - i. A statement that the 1997 and/or 1998 emission reductions on which the claim for early reductions is being based have not been used and will not be used, in whole or in part, as a basis for generating emission offsets pursuant to N.J.A.C. 7:27-18; or
 - ii. Proof of permanent retirement of any emission offsets created pursuant to N.J.A.C. 7:27-18 which are based in whole or in part on the 1997 and/or 1998 emission reductions which are the basis for the early reduction being claimed; and
 12. (No change.)
- (d)-(o) (No change.)
(p) The Department shall provide the following information to the NATS Administrator and to USEPA, Region II:
1. A list of all sources that have generated approved early reduction credits; and
 2. The number of early reduction allowances approved for each source.

CHAPTER 27A. AIR ADMINISTRATIVE PROCEDURES AND PENALTIES
SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR
ADJUDICATORY HEARINGS

7:27A-3.2 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. Unless otherwise specified below, all words and terms are defined in N.J.S.A. 26:2C-2 and in N.J.A.C. 7:27.

...

7:27A-3.10 Civil administrative penalties for violation of rules adopted pursuant to the Act

(a)-(h) (No change.)

(i) (Reserved)

(j)-(l) (No change.)

(m) The violations of N.J.A.C. 7:27 and the civil administrative penalty amounts for each violation are as set forth in the following Civil Administrative Penalty Schedule. The numbers of the following subsections correspond to the numbers of the corresponding subchapter in N.J.A.C. 7:27. The rule summaries for the requirements set forth in the Civil Administrative Penalty Schedule in this subsection are provided for informational purposes only and have *[on]* **no*** legal effect.

CIVIL ADMINISTRATIVE PENALTY SCHEDULE

1.-7. (No change.)

8. The violations of N.J.A.C. 7:27-8, Permits and Certificates, and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

...

9.-15. (No change.)

16. The violations of N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Compounds (VOC), and the civil administrative penalty amounts for each violation, per source, are as set forth in the following table:

...

17.-18. (No change.)

19. The violations of N.J.A.C. 7:27-19, Control and Prohibition of Air Pollution from Oxides of Nitrogen, and the civil administrative penalty amounts for each violation, are as set forth in the following table:

Citation

Class

...

N.J.A.C. 7:27-19.24(b)

Report

N.J.A.C. 7:27-19.25(d)

Recordkeeping

THIS IS A COURTESY COPY OF THIS RULE ADOPTION. THE OFFICIAL VERSION WAS PUBLISHED IN THE APRIL 5, 2004 NEW JERSEY REGISTER AT 36 N.J.R. 1791(a). SHOULD THERE BE ANY DISCREPANCIES BETWEEN THIS TEXT AND THE OFFICIAL VERSION OF THE ADOPTION, THE OFFICIAL VERSION WILL GOVERN.

...

20.-21. (No change.)

22. The violations of N.J.A.C. 7:27-22, Operating Permits, and the civil administrative penalty amounts for each violation, per source operation, are set forth in the following tables:

...

<u>Citation</u>	<u>Class</u>
N.J.A.C. 7:27-22.3(q)	Certify Report
N.J.A.C. 7:27-22.5(b)	Submit Application for Operating Permit

23.-29. (No change.)

30. (Reserved)

31. (No change.)

(n)-(p) (No change.)