Banking of Creditable Emission Reductions
FREQUENTLY ASKED QUESTIONS

1. Q: I am a facility with a Facility Wide Permit and am shutting down completely. Do I file my banking applications based on the FWP?

A: No. Subchapter 18, section 18.8(a) requires the applicant to make application on a form (CER-01, Feb2009) that includes, among other items, specification of the equipment or source operations related to the emission reductions. Also section 18.8(j) requires a $400 fee for application and verification fee based on source operation. Source operation is defined as any process or any identifiable part thereof that emits or can reasonably be expected to emit any air contaminant either directly or indirectly into the outdoor atmosphere. Each application for banking should follow a logical format. For example, the application can be for an individual stack and the sources connected to that stack. The fee would be $400. (Similar to what was filed for the original New Source Review application). Generally, for complex applications, the Department should be contacted for information.

2. Q: I have a facility that I am shutting down in Staten Island, NY. Can I use those emissions for offset in a facility in Carteret, which is 5 miles away from the Staten Island facility?

A: No. Subchapter 18 does not have any provisions at present for interstate trading. Section 18.11, "Procedures for interstate and intrastate trading" is reserved.

3. Q I am purchasing CERs from a company that banked a shutdown over 5 years ago. I don't plan to use them for a few years. Once the CERs are transferred to me is the 50 % discounting of the credits still calculated from the original date of the credits, or does the calendar start at "0" with my purchase? What if my project is not completed within the next discount period, and I already have received the transferred CERs, do I lose them?

A All calculations for the banked emissions discounts from shutdowns are calculated from the entry date of the original banking application. If the transferred credits are committed for their use as offsets in a permit application submitted to the Department, the discounting clock stops with the approval date of the permit that used the banked credits.

4. Q We are ready to jointly agree to transfer credits from the seller to the buyer. Is the signature of each responsible official adequate initiate the transfer action?

A In addition to the responsible official signing for each firm, the signatures must be original and notarized. This is standard procedure for this process.

5. Q I want to bank my actual emissions for a shutdown. How do I determine what they are?

A The actual rate of emissions shall equal the average rate at which the air contaminant was actually emitted during the two calendar years that are immediately preceding the banking application date. See the definition of "actual emissions" in N.J.A.C. 7:27-18. For some equipment a good way to estimate actual emissions is to use total fuel use for each year and apply AP-42 emission factors. Note that data submitted in the annual Emission Statements Report must match the data submitted in the banking application. Ideally, stack test data would be the best form of information to which you would apply actual operating times for the equipment in question. Equipment must be in compliance before you can bank it.

6. Q There are two divisions of a major corporation located on non-contiguous property that want to trade banked emissions. How do I do it?

A An officer of the Corporation to which officials of each division report may sign and notarize an agreement of transfer letter and submit it to DEP for processing. Both divisions must be located in the same Federally designated non-attainment area.

7. Q. Company B is buying Company A. The purchase is to include the credits that company A had banked in the past. What is the proper procedure?

A. As per the provisions in N.J.A.C. 7:27-18.8(j), submit, to this Department, a "transfer of ownership letter" to transfer the facility ownership of the banked credits from Company A to Company B. Without that, the ownership of the banked credits will remain with the original owner.

8. Q. Company A merged with Company B. During merger talks Company A shutdown some equipment but failed to submit the application to Bank the shutdown emissions within one year due to the merger process. Can the Department still accept the application using discretionary consideration because of the filing delay because of the merger process?

A. No. The rule is clear. N.J.A.C. 7:27-18.8(c) clearly states that application shall be made no later than 12 months after the emission reduction occurs.

9. Q. Equipment has stopped operating for over a year. However the equipment remained in an installed status, Operating Certificates are still active and the equipment could be turned on at any time. Has a shutdown occurred?

A. If the equipment is fully functional and capable of being used at any time, the operating certificate is active and the emissions were not used as emission offsets at the facility in a determination of a net emission increase or a significant net emission increase as per N.J.A.C. 7:27-18.7, the equipment is not considered shutdown. To be considered shutdown, the equipment must be disconnected and certificate terminated by enforcement.

10. Q. Often times in these emissions markets, we see investment or service companies buying ERCs for future needs. That said, are any such companies forbidden from buying and holding ERCs despite the fact that there is no current permit application?

A. The Emission Offset Rule (N.J.A.C. 7:27-18) applies to facilities that have permits pursuant to N.J.A.C. 7:27-8 or N.J.A.C. 7:27-22. This implies that CERs can only be owned by facilities in New Jersey that have Preconstruction permits pursuant to N.J.A.C. 7:27-8 or a Title V Permit pursuant to N.J.A.C. 7:27-22.

11. Q. Can a facility use NOx/VOC creditable emission reductions (CERs) from a source located in southern New Jersey to offset emission increases of NOx/VOC emissions from a new or modified source located in northern New Jersey.

A. Use of NOx/VOC creditable emission reductions (CERs) from a source located in southern New Jersey to offset emission increases of NOx/VOC emissions from a new or modified source located in northern New Jersey is prohibited for the following reasons:

New Jersey's northern counties are classified as "severe-17" non-attainment area for 1-hour ozone standard and New Jersey's southern counties are classified as "severe-15" non-attainment area for 1-hour ozone standard pursuant to 40 CFR 81.307. CAA Section 173(c) (1) states that the owner or operator of a new or modified major stationary source may comply with any offset requirement for increased emissions of any air pollutant only by obtaining emission reductions of such air pollutant from the same source or other sources in the same nonattainment area, except that the State may allow the owner or operator of a source to obtain such emission reductions in another nonattainment area if (a) the other area has an equal or higher nonattainment classification than the area in which the source is located and (b) emissions from such other area contribute to a violation of the national ambient air quality standard in the nonattainment area in which the source is located.

Pursuant to the above provisions new or modified sources located in southern New Jersey (severe-15 classification) may be able to purchase credits from sources located in northern New Jersey (severe-17 classification) but reverse is not true.

12. Q. When a CER transfer application is submitted to NJDEP and it is approved, are the CERs verified at that time (i.e. before transfer) or must one go through a separate process to have these verified before purchasing them from the seller? Our concern is to purchase verified CERs which NJDEP will approve as offsets for the WDES.

A. CERs available in the banking or transfer database, before any applicable discount, have generally gone through initial verification and validation process, including enforcement inspection of the shutdown facility. NJDEP issues an approval letter after completing the initial verification and validation process. The banked CERs registered with the Department are considered valid.

13. Q. If a CER found in New Jersey's Banked Emission Credits inventory has been previously verified by NJDEP and is located in the same non-attainment area, are there any circumstances which NJDEP would not approve of its use as an offset? N.J.A.C. 7:27-18.8(f) discusses 50% discounting of "unused" emission offsets for those banked emission reductions that remain unused as emission offsets for more than five years after the date the emission reductions is submitted for banking.

A. The banked CERs will not be available for use if the CERs were generated through shutdown/curtailment and the CER registration date is more than 10 years old. Only 50% of the banked CERs will be available for use, if the CER registration is more than 5 years old. All calculations for the banked emissions discounts from the shutdown are calculated from the entry date of original banking application.

14. Q. The Entry Date presented in the New Jersey's Banked Emission Credits inventory, is this the date that the discounting time period is based off ?

A. Yes. All calculations for the banked emissions discounts from the shutdown are calculated from the entry date of original banking application. The same date is shown in all reports provided to you.

15. Q. When does a CER become officially "used" so that it is no longer subject to the 50% discounting discussed in N.J.A.C. 7:27-18.8(f) or the 100% discounting discussed in N.J.A.C. 7:27-18.8(g)?

For example, is the CERs "used" when we submit paperwork/request to NJDEP to transfer it for use in our permit or is there some other mechanism that it must be "used"?

A. CER become officially used when CERs are proposed to be used as emissions offsets or used in calculating the proposed net emission increase. When the CERs are used to satisfy an approved pre-construction permit, such use should be documented by submitting Administrative Amendment application to the Department. Submittal of Administrative Amendment application generally occurs after a request to transfer CERs is submitted to the Department. The CER transfer application is available at www.state.nj.us/dep/aqpp/applying.html.

The transfer of any CERs is on "as is" basis. (i.e. time discount and rule discount clocks do not stop during the transfer process). Mere transfer of credits does not stop the clock. Discounting stops when CERs are applied to the project, not at the time of transfer. The discounting clock stops upon approval of the Administrative Amendment application that reflects a commitment to use the transferred credits as offsets.

16. Q. Depending on the answer to the previous question, there may be some instances where all the paperwork is not processed by NJDEP before the discounting date is encountered.

A. Transfer does not stop discounting. There are two types of discounting that may be applicable to the banked credits:

(1) Time Discount: Pursuant to N.J.A.C. 7:27-18.8 (f) and (g), the value of banked CERs from shutdown or curtailment, which remain unused as emission offsets for more than 5 years after the date the emission reduction is submitted for banking, shall be discounted by 50%. Also, CERs which remain unused as emission offsets for 10 years after the date they have been submitted for banking would not be available for offset use and such CERs would be reverted to the State.

(2) Rule Discount: Pursuant to N.J.A.C. 7:27-18.8(e), the value of banked credits should be reduced by applying the current rule limits.

We would not apply time discounting and rule discounting during CER transfer process. However, we would review the time and rule discounting when you submit Administrative Amendment application to the Department.

17. Q. Assuming that an Application for Transfer of Creditable Emission Reductions (CERS) and a CERS Transfer request has been approved by the NJDEP and we have been assigned a Transfer Banking Log Number, how would we gain NJDEP approval to "use" the CERs as offsets? Is it as simple as writing a letter requesting this? We see no standard form to initiate this process and note that in our permit condition it simply states, "submit Purchase Agreement....prior to initial startup". Clarification with respect to "use" of CERs.

A. Use of CER for offset compliance is a two step process. During the first step, CERs are secured/transferred from a seller to a facility that needs offsets. This action provides an ability to use CERs. During the second step, a facility applies the CERs to a specific project. This action is carried out by

submitting a permit modification application or Administrative Amendment application in some cases to the Department to comply with the offset conditions of an approved permit.

18. Q. Is it acceptable to "use" the CERs well in advance of actual emissions from the source? For example, the WDES is not expected to be operational until early 2014. Is it acceptable to "use" the CERs as offset in the next few months to fulfill our permit requirements?

A. Yes. Please see response to question above.

19 Q. Can ERCs generated in Burlington County be used in Middlesex County? Looking at the map, the counties are within 100 miles of one another. However Burlington County is south-southwest of Middlesex County. Are both counties designated Severe-15 non-attainment? Or is Burlington Severe-15, while Middlesex is Severe-17, and thus transfers from Burlington into Middlesex forbidden?

A. ERCs generated in Burlington County cannot be used in Middlesex County in accordance with the New Jersey Ozone (1-hour) classification specified in 40 CFR Part 81.331. The Burlington County is located in the federally designated Philadelphia- Wilmington-Trenton area which is classified as "severe-15" for the ozone standard in the code. The Middlesex County is located in the federally designated New York-New Jersey-Long Island area which is classified as "severe-17" for the ozone standard in the code.

The N.J.A.C. 7:27-18.5(j) states that the emission reductions used to offset emission increases shall , unless the facility for which the emissions increase is proposed is located in an attainment area, be secured from the applicant's facility or from another facility located in the same nonattainment area as the applicant's facility. In a case where the facility at which the emissions increase is to occur is located in an attainment area, the emission reductions shall be secured from a facility in the nonattainment area whose air quality could be adversely affected by the proposed construction or alteration. In both cases, if the area has been designated a nonattainment area by EPA pursuant to 40 CFR 81.331, the emission reductions shall be secured from the same Federally-designated non-attainment area.