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ENVIRONMENTAL PROTECTION

OFFICE OF AIR QUALITY MANAGEMENT COMPLIANCE AND ENFORCEMENT AIR QUALITY PERMITTING

Open Market Emissions Trading

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

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

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

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

Authorized By: Bradley M. Campbell, Commissioner, Department of Environmental Protection.

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

Calendar Reference: See summary below for explanation of exceptions to calendar requirement

DEP Docket Number: 15-03-07/379

Proposal Number: PRN 2003-319

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A public hearing concerning this proposal will be held at 1:00 P.M. on **Wednesday, September 10, 2003**, at:

The War Memorial Building
Turning Point Conference Room
West Lafayette Street
Trenton, New Jersey

Submit written comments, identified by the DEP Docket Number given above, by close of business on **Friday, October 3, 2003**, to:

Attn: Alice Previte, Esq.
DEP Docket No. 15-03-07/379
Office of Legal Affairs
New Jersey Department of Environmental Protection
PO Box 402
Trenton, N.J. 08625-0402

The Department recommends, but does not require, that commenters submit comments on diskettes as well as on paper. The Department will be able to upload the comments onto its word processing software, thereby saving considerable time in not having to retype the comments. The Department will use the paper version of the comments to ensure that uploading is accomplished successfully.

The Department prefers the submission of comments in Microsoft Word 6.0 or higher or Corel Word Perfect, but will accept comments submitted in other word processing software that can be read or used by Microsoft Word 6.0 or Corel Word Perfect. Macintosh format should not be used. Text enhancements such as underlines, bold, etc., are often not converted from one word processing software to another. Therefore, when suggesting additions or deletions to rule text, a commenter should include the preferred rule text without text enhancements such as underlining or bold fonts.

Comments on the rule Summary and impact statements should be included with the comments on the pertinent section of the rule text wherever possible in order to eliminate duplicate comments and facilitate the Department's task in organizing and responding to

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comments. Since comments will be sorted electronically, the following format should be used for each comment: Rule Section Citation - COMMENT: Comment text. For example:
7:27-8.2 COMMENT: The Department should not remove the provisions at N.J.A.C. 7:27-8.2(k) because....

Since the Department has provided a 60-day comment period on this proposal, the proposal is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

Interested persons may obtain a copy of this proposal in the following ways:

1. Visit the DEP's website at: <http://www.nj.gov/dep/aqm>, where Air Quality rules, proposals, adoptions and revisions to the New Jersey State Implementation Plan (SIP) are available. Specifically, this OMET repeal proposal can be viewed or downloaded from the following webpage: <http://www.state.nj.us/dep/aqm/whatsnew.htm>.

2. Look for the Department's proposal in the July 21, 2003, issue of the New Jersey Register.

3. Inspect or copy the proposal at the Department's Public Information Center at 401 E. State Street, 1st Floor in Trenton, or the Department's four Regional Enforcement Offices in Camden, Parsippany, Robbinsville, and West Orange. You can also inspect or copy the proposal at a number of public libraries throughout the State.

4. Request a copy of the proposal by calling Sue Murray at (609) 292-6722, or by e-mailing her at sue.murray@dep.state.nj.us.

The agency proposal follows:

Summary

New Jersey's Open Market Emissions Trading (OMET) program has suffered from problems that diminished its effectiveness and may have resulted in an environmental disbenefit. As is discussed below, 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. If adopted, this rulemaking would end the OMET program effective on the operative date of the adoption and would provide time, if necessary, for former users of discrete emission reduction (DER) credits to comply with the rules limiting volatile organic compound (VOC) and oxides of nitrogen (NO_x) emissions.

Background

On August 2, 1996, the Department promulgated rules at N.J.A.C. 7:27-30 to establish and govern the OMET program. 28 N.J.R. 3414(a). The Department adopted the rules in partial response to 1995 amendments to the New Jersey Air Pollution Control Act (APCA).

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Those amendments called upon the Department to promulgate “emissions trading and banking programs that use economic incentives to make progress toward the attainment or maintenance of the National Ambient Air Quality Standards (NAAQS), reduce or prevent emissions of air contaminants, ensure healthful air quality, or otherwise contribute to the protection of human health, welfare and the environment from air pollution.” See N.J.S.A. 26:2C-9.8. The rules set standards and procedures for generating, banking, transferring, using, and retiring DER credits. In developing the rules, the Department drew substantially on the proposed model rule published by the USEPA on August 3, 1995 (60 Fed. Reg. 39668).

The OMET program originally provided for DER credits to be based on reductions in NO_x and VOC emissions. Amendments to the OMET rules, published in May 2000, added provisions for generating and banking, but not using, credits based on reductions of greenhouse gas (GHG) emissions. In developing the OMET program, the Department chose to privatize a number of the program’s functions and to have the work funded by OMET market participants. For example, the Department determined that it would not verify the validity of DER credits itself, but would instead allow credits to be verified by a professional engineer or certified public accountant licensed to practice in New Jersey. In addition, the Department contracted with Mosakin International Corporation to operate a registry of DER credit transactions as well as a telephone hotline, to be funded by fees on credit transactions. The use of private third parties to perform these functions was encouraged by the 1995 amendments to the Air Pollution Control Act and by the lack of State funding for evaluating DER credit generation, tracking DER credit transactions and evaluating DER credit use. The Department did retain compliance and enforcement audit functions for this program.

Experience with the OMET program

The Department remains committed to emissions trading as an important tool to make progress toward attaining the health-based National Ambient Air Quality Standards (NAAQS) and for meeting increasingly stringent emissions standards. For example, the NO_x Budget Program continues to be supported by the Department. However, the Department has reviewed its experience with the OMET program and concluded that this particular emissions trading program has failed for several reasons.

First, enforcement investigations have raised questions about whether the verification of DER credits was consistently performed correctly and effectively. In some cases, the number of credits generated as a result of a particular emission reduction strategy may have been overstated. In at least one case, the registry accepted a filing that purported to use non-ozone season DER credits for compliance during the ozone season. Second, the program

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allowed credits to be based on emission reductions that occurred many years before the credits were actually used. As a result, the program provided no assurance that it would achieve a contemporaneous air quality benefit. Third, enforcement investigations have revealed that some facilities may have built a portion of their air compliance strategy entirely on the prospect of using emission credits. Such a strategy was unsound, because there could never be any assurance that a facility needing credits for compliance would be able to purchase or generate all of the credits it needed for compliance.

The Department communicated its intention to terminate the existing OMET program to the USEPA by letter dated August 13, 2002. In response, on October 7, 2002, the USEPA withdrew its prior proposed conditional approval of the revision to New Jersey's State Implementation Plan (SIP) for ozone that reflected the adoption of the OMET program rules. In that withdrawal, the USEPA indicated its intention to work with New Jersey to address compliance issues concerning sources that currently hold or have been using credits.

Terminating the program would affect OMET market participants, especially those who are currently using DER credits for compliance. The Department held a public meeting on December 16, 2002, to discuss the potential effects on these and other OMET market participants, potential environmental impacts, and suggestions for implementing the termination. The Department also accepted written comments on the termination of the OMET program through December 18, 2002.

In addition to those who participated in the December 16, 2002, discussion, the following parties submitted written comments to the Department:

1. Anthony Russo, Chemistry Council of New Jersey
2. Glenn D. Bodnar, P.E., Bodnar Environmental
3. Glenn D. Bodnar, P.E., on behalf of Pechter's Baking Company
4. Toni Wagner, Schering Corporation, Union
5. Janet Griffin, Schering Corporation, Kenilworth
6. William M. Hanna III, P.E., Environmental Resources Management
7. Fiji George, Tennessee Gas Pipeline Company
8. Russel Like, Gabel Associates, on behalf of Independent Energy Producers of New Jersey

Generally speaking, commenters supported the existing OMET program, but recognized its problems. Some wanted to retain the existing program with some changes. Some offered suggestions for a smooth transition out of this program. Others suggested that the Department work to create a replacement trading program that would avoid the pitfalls

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that contributed to the demise of the current program. More specifically, commenters raised the following general points:

- The current OMET program, while flawed in its execution, provided environmental benefits, rewarded good actors and was cost effective;
- Environmental benefit was realized from the retirement, since the inception of the program, of credits representing over 20,000 tons of NO_x and VOC emissions. Credits representing 1,518 tons of NO_x and 138 tons of VOCs were used to comply with NO_x and VOC Reasonably Available Control Technology (RACT) requirements; the retirement of 10 percent of these credits was also an environmental benefit;
- The Department should continue the OMET program, but take over verification and oversight functions from the third-party contractor;
- The Department should develop a new trading program, because it is statutorily required to have such a program;
- The Department should establish a timetable to allow current users of DER credits to make the necessary adjustments, such as applying for Alternate Emission Levels (AELs), adding on pollution control, or making necessary equipment modifications or replacement;
- The Department should grandfather current users of DER credits, grant them AELs, or let them use NO_x budget allowances in the place of DER credits;
- The Department should allow interfacility trading using a “bubble permit” concept to allow emissions averaging between facilities currently involved in emission trading;
- The Department should provide financial assistance to current users of DER credits to ease the transition;
- Current users of DER credits are concerned that the USEPA might choose to enforce against them during the transition period as the Department moves to repeal the OMET program;
- The Department should clarify whether current users of DER credits should continue to use DER credits under the current terms of their permits until the program is officially terminated; and
- The Department should allow those who have already purchased credits to use them and be credited for their use.

After carefully considering the comments generated by the December 16, 2002, meeting, the Department determined to proceed with a proposed termination of the current 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.

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If the Department adopts this rulemaking, the OMET program will end on the operative date of this rulemaking, which is 60 days after the adoption of this rulemaking. The Department proposes to establish a period of 12 months from the operative date of this adoption for those parties who have been using DER credits to now come into compliance with the Department's VOC and NO_x emission requirements without the use of these DER credits. The Department proposes to limit this compliance period to only those parties who used DER credits in compliance with the Open Market Emissions Trading Program rules within the three years immediately preceding the date on which this proposal is published, referred to in the proposal as "former DER credit users." These former DER credit users will have most, but not all, of the compliance alternatives available to them that were originally available when the VOC and NO_x RACT requirements were first implemented, as is explained more fully below. By establishing the date of publication of this proposal as the cutoff date in the definition of "former DER credit users," the Department intends to eliminate the potential use of DER credits after the proposal is published merely for the purpose of procuring these extended compliance options. By limiting the population to those who used DER credits within the three-year period immediately preceding this proposal, the Department intends to make extended compliance options available only to those who still need them. That is, these options would be limited to those who relied on DER credit use to comply and would be in need of some compliance alternative because of the termination of the OMET program.

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According to the OMET Registry, the following parties have used DER credits within the past three years:

<u>Facility Name</u>	<u>Plant Name</u>	<u>Use Type</u>	<u>Fac. ID #</u>
Atlantic Energy Inc. [Conectiv]	Carll's Corner Generating Station	NO _x RACT	75512
Atlantic Energy Inc. [Conectiv]	Cedar Generating Station	NO _x RACT	78932
Atlantic Energy Inc. [Conectiv]	Deepwater Generating Station	NO _x RACT	65495
Atlantic Energy Inc. [Conectiv]	Mickleton Generating Station Unit 1	MEG Alert	55784
Atlantic Energy Inc. [Conectiv]	Middle Generating Station	NO _x RACT	73243
Atlantic Energy Inc. [Conectiv]	Missouri Ave. Generating Station	NO _x RACT	70525
Coastal Eagle Point Oil Co.	C.E.P.O.C.	NO _x RACT	55781
Fibermark, Inc.	Warren Glen Mill	NO _x RACT	80354
Frigidaire Home Comfort Prod.	Frigidaire Home Products	Penalty Settlement	17867
Interbake Foods Inc.	Interbake Facility	VOC RACT	41802
Mafco Worldwide Corp.	Mafco Facility	NO _x RACT	51486
Merck & Co., Inc.	Rahway Site	NO _x RACT	41712
Pechter's Baking Co.	Pechter's Baking Company	VOC RACT	12100
Roche Vitamins Inc.	Roche Vitamins Inc	Penalty Settlement	85452

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Schering Corp.	Cogen Facility, Cogen Unit #2	NO _x RACT	41708
South Jersey Gas	McKee City	NO _x RACT	70513
Tennessee Gas Pipeline Co.	Compressor Station 325	NO _x RACT	83405
Trigen-Trenton Energy Co.	320 South Warren Street	NO _x RACT	61015
Vineland Mun.Electric Utility	Howard M Down - Unit 10	NO _x RACT	75482

(Note: Inclusion in the above does not imply that DER credits were used in compliance with the OMET program rules. Also, not all of these facilities currently use DER credits. For example, Atlantic Energy's five gas turbine electric generating facilities are now subject to an Administrative Consent Order to comply with NO_x RACT and no longer are required to use DERs. Hence, this proposed repeal of the OMET rules is not relevant to these facilities.)

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Some of these users may qualify for time to implement the NO_x RACT and VOC RACT compliance options originally provided sources when the RACT rules were first promulgated in 1994 and 1995. The Department encourages any other parties who believe they have used DER credits in the past three years in conformance with the OMET program rules at N.J.A.C. 7:27-30 and who will not comply with VOC or NO_x RACT requirements absent the OMET program to contact the Department if they wish to be considered for these compliance options.

The Department is also proposing to allow these former DER credit users the option of buying and using allowances issued under the NO_x Budget Program in satisfaction of NO_x emission limits set forth in N.J.A.C. 7:27-19. (The NO_x Budget Program is the New Jersey component of a regional program for reducing NO_x emissions from major NO_x sources in order to make progress toward achieving the NAAQS for ozone. The NO_x Budget Program consists of a regionwide NO_x emissions budget or emissions "cap" for sources subject to the program and establishes a regionwide trading mechanism in order to provide a more flexible and cost-effective means to comply with the program.) The OMET termination proposal provides that a former DER credit user who does not come into compliance with the NO_x RACT emission limits within the 12-month compliance period would have the option of filing a seven-day notice at least seven days before the end of that period, indicating the intent to use NO_x budget allowances to satisfy those NO_x RACT requirements. The former DER credit user would subsequently file a Notice of Use of NO_x Budget Allowances with the Department, including the calculation of the compliance shortfall for the prior calendar year. This Notice of Use would also include a certification that the requisite number of NO_x budget allowances had been purchased and retired for that prior calendar year. Some former DER credit users may have been allocated NO_x budget allowances under New Jersey's NO_x Budget Program. Other former DER credit users would be able to purchase NO_x budget allowances using the NO_x allowance tracking system (NATS), at the prevailing market rate. Currently, NO_x budget allowances can be purchased for about \$7,000 to \$8,000 per allowance, which represents one ton of NO_x emissions. While the NO_x Budget Program governs the emissions of NO_x during the ozone season (May 1 through September 30), the proposal envisions the use of these allowances to compensate for exceedances of the NO_x RACT limits for an entire calendar year. This would provide added air quality benefits during the ozone season when NO_x reductions are most important. It should be noted that the NO_x Budget Program rules at N.J.A.C. 7:27-31.6 currently provide that a party to whom NO_x budget allowances had been allocated may convert those allowances into DER credits. The concept of using NO_x budget allowances to satisfy RACT requirements is thus not a new one.

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In the case where an operating permit has been issued pursuant to N.J.A.C. 7:27-22 that reflects the use of DER credits, the Department may contact the permittee under the provisions of N.J.A.C. 7:27-22.25, Department-initiated operating permit modifications, to modify the permit. Generally, references to the OMET rule in operating permits will be deleted at the five-year renewal of the operating permit.

A more detailed explanation of the proposed repeals and amendments follows. Generally speaking, the Department proposes to remove any provisions in Chapter 27 that will be rendered irrelevant by the repeal of the OMET Program rules at N.J.A.C. 7:27-30. In addition, the Department is adding a number of provisions to N.J.A.C. 7:27-16, 19 and 31 to accommodate those who have, for the three years immediately preceding this proposal, been relying upon, and continue to rely upon, the use of DER credits to meet VOC and NO_x emission limits, as explained in greater detail below.

Subchapter 1. General Provisions

N.J.A.C. 7:27-1.32 Request for an adjudicatory hearing

The Department proposes to amend this section so it no longer provides that a generator or holder of a DER credit may seek a hearing. The termination of the OMET program will make this provision unnecessary.

Subchapter 8. Permits and Certificates for Minor Facilities (And Major Facilities Without an Operating Permit)

N.J.A.C. 7:27-8.1 Definitions

The Department proposes to add a definition of the term “former DER credit user” to keep rule text simple and concise whenever reference is made to one who used DER credits to satisfy the requirements of N.J.A.C. 7:27-16 or 19 in the three years immediately preceding the publication of this proposal in compliance with the OMET program rules.

The Department proposes to modify the definition of “potential to emit” to remove references to the use of DER credits.

N.J.A.C. 7:27-8.3 General provisions

The Department proposes to remove provisions at N.J.A.C. 7:27-8.3(k) that explain when a permittee must obtain the approval of the Department for a change of permit reflecting the use of DER credits. The Department proposes reserving N.J.A.C. 7:27-8.3(k) to avoid recodification of the rule provisions that follow.

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At N.J.A.C. 7:27-8.3(l), the Department proposes to remove the requirement that a permittee use DER credits to compensate for failure to timely test VOC and/or NO_x emissions of equipment or control apparatus and for failure to install or operate a required control apparatus. The Department proposes reserving N.J.A.C. 7:27-8.3(l). A permittee will continue to be subject to enforcement proceedings for these violations of testing and implementation requirements.

The Department proposes to amend N.J.A.C. 7:27-8.3(o) to provide that DER credits would not be available for use on and after the operative date of this rulemaking. The Department proposes that one who used DER credits to comply with a NO_x RACT limit could henceforth use NO_x budget allowances to comply with that limit. The Department proposes new text at N.J.A.C. 7:27-8.3(o)1 and 2 that would refer the reader to N.J.A.C. 7:27-19.27 for an explanation of how NO_x budget allowances could be used and would require the permittee to file a seven-day-notice of its intent to use NO_x budget allowances pursuant to N.J.A.C. 7:27-8.20.

N.J.A.C. 7:27-8.4 Applications

The Department proposes to remove the reference at N.J.A.C. 7:27-8.4(r) to the use of DER credits to fulfill emission offset requirements and proposes to reserve this subsection. This provision would no longer be relevant if the OMET program is terminated.

N.J.A.C. 7:27-8.17 Changes to existing permits and certificates

The Department proposes to remove provisions at N.J.A.C. 7:27-8.17(e) that explain when a permit must be changed to reflect the use of DER credits, as they would no longer be relevant if the OMET program is terminated.

N.J.A.C. 7:27-8.20 Seven-day-notice changes

The Department proposes to remove the provision at N.J.A.C. 7:27-8.20(b)3 that provides that a permittee may use a seven-day-notice for notice of a potential increase in the actual emissions of an air contaminant included in the permit due to compliance using DER credits. In its place the Department proposes language that would require the filing of a seven-day-notice for the intent to use NO_x budget allowances by those currently using DER credits (referred to as “former DER credit users”) to comply with a NO_x RACT limit. The proposal provides further that a former DER credit user choosing to so use NO_x budget allowances would be required to file this seven-day-notice at least seven days before the start of the calendar year for which the NO_x budget allowances are to be used.

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N.J.A.C. 7:27-8.25 Special provisions for pollution control equipment or pollution prevention process modifications

The Department proposes to remove a provision at N.J.A.C. 7:27-8.25(d) that disallows the use of an emission reduction resulting from disapproved activities as the basis for generating a DER credit. This provision would no longer be relevant if the OMET program is terminated.

N.J.A.C. 7:27-8.28 Delay of testing

The Department proposes to remove the provision at N.J.A.C. 7:27-8.28(c) that a permittee who delays testing may be required to compensate through the use of DER credits. This provision would no longer be relevant if the OMET program is terminated.

Subchapter 16. Control and Prohibition of Air Pollution by Volatile Organic Compounds

N.J.A.C. 7:27-16.1 Definitions

The Department proposes to add a definition of the term “former DER credit user” to keep rule text simple and concise whenever reference is made to one who used DER credits to satisfy the requirements of this subchapter in the three years immediately preceding the publication of this proposal in compliance with the OMET program rules.

N.J.A.C. 7:27-16.1A Purpose, scope, applicability, and severability

The Department proposes to amend N.J.A.C. 7:27-16(f) to end the option of complying with a VOC emissions limit by using DER credits. The Department also proposes amending these provisions to provide those currently using DER credits (referred to as “former DER credit users”) with additional time, after the termination of the OMET program, to comply with the requirements of N.J.A.C. 7:27-16. The Department does not propose to provide this additional time to those who used DER credits in satisfaction of either settlement of a penalty imposed pursuant to N.J.A.C. 7:27A-3.10 or an Administrative Consent Order (ACO) entered into with the Department. Nor does the Department propose to provide this additional time to those former DER credit users who, prior to January 1, 2003, entered into an Administrative Consent Order with the Department to allow VOC-emitting units to operate under an alternative VOC control plan without the requirement to hold VOC DER credits. The Department proposes this exclusion at N.J.A.C. 7:27-16.1A(h). The Department proposes this exclusion so that only those facilities that had relied on their continued ability to comply with RACT requirements by using DER credits would have time to make necessary changes to comply. This would not be the case for facilities using DER credits as part of penalty settlements or ACOs. Similarly, this would not be the case where

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a facility had used DER credits in the past, but the challenge to that use resulted in an ACO that included an alternative VOC control plan. It is not the Department's intent to provide a remedy such as an additional extension of time to parties with such an alternative VOC control plan.

The Department is guided in this extension of time by the time frames that were originally established for the VOC RACT requirements of N.J.A.C. 7:27-16 and the NO_x RACT requirements of N.J.A.C. 7:27-19. That is, when the Department adopted the RACT requirements, it provided roughly from 10 to 16 months from the operative date of its rulemaking for parties to achieve compliance. Accordingly, the Department proposes to add provisions that deadlines established at N.J.A.C. 7:27-16.7(k)2, 16.8(d), 16.9(d), 16.10(c), 16.11(c), 16.13(a), 16.17(b)2, 16.17(f)2, and 16.21(b) must be met by former DER credit users within 12 months after the operative date of this rulemaking. Similarly, the Department proposes to add provisions that additional deadlines established at N.J.A.C. 7:27-16.7(k)1, 16.17(b)1, and 16.21(a) must be met by former users of DER credits within three months after the operative date of this rulemaking, which is consistent with the original time frames for such requirements. Finally, the Department proposes to add provisions that the compliance demonstration deadlines established at N.J.A.C. 7:27-16.8(e), 16.9(e), 16.10(d), 16.11(d), and 16.23(b) and (c) must be met by former DER credit users within 24 months after the operative date of this rulemaking, which is also consistent with the original time frame for compliance demonstrations.

N.J.A.C. 7:27-16.17 Facility-specific VOC control requirements

The Department proposes to amend N.J.A.C. 7:27-16.17(m) so that it no longer would be a condition of approval of an application for an alternative VOC control plan that DER credits be used to compensate for the difference between the emissions allowed under the alternative VOC control plan and under the emission limit which would otherwise apply under N.J.A.C. 7:27-16.

Subchapter 18. Control and Prohibition of Air Pollution from New or Altered Sources Affecting Ambient Air Quality (Emission Offset Rules)

N.J.A.C. 7:27-18.2A Use of DERs

The Department proposes to repeal this section, so that DER credits will no longer be usable as emission offsets as currently allowed under N.J.A.C. 7:27-30.13(c).

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N.J.A.C. 7:27-18.11 Interface with other trading programs

The Department proposes to repeal and reserve this section. It currently provides for the conversion of banked emission reductions to DER credits. This conversion option would end with the termination of the OMET program.

Subchapter 19. Control and Prohibition of Air Pollution from Oxides of Nitrogen

N.J.A.C. 7:27-19.1 Definitions

The Department proposes to add a definition of the term “former DER credit user” to keep rule text simple and concise whenever reference is made to one who used DER credits to satisfy the requirements of this subchapter in the three years immediately preceding the publication of this proposal in compliance with the OMET program rules.

N.J.A.C. 7:27-19.3 General provisions

The Department proposes to amend N.J.A.C. 7:27-19.3(g) so that it no longer provides the option of complying with a NO_x emissions limit by using DER credits. Instead, the Department proposes amending these provisions to provide those currently using DER credits (referred to as “former DER credit users”) with additional time, after the termination of the OMET program, to comply with the requirements of N.J.A.C. 7:27-19. The Department does not propose to provide this additional time to those who used DER credits in satisfaction of either settlement of a penalty imposed pursuant to N.J.A.C. 7:27A-3.10 or an Administrative Consent Order (ACO) entered into with the Department. Nor does the Department propose to provide this additional time to those former DER credit users who, prior to January 1, 2003, entered into an Administrative Consent Order 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 NO_x DER credits. The Department proposes this exclusion at N.J.A.C. 7:27-19.3(g)14. The Department proposes this exclusion so that only those facilities that had relied on their continued ability to comply with RACT requirements by using DER credits would have time to make necessary changes to comply. This would not be the case for facilities using DER credits as part of penalty settlements or ACOs. Similarly, this would not be the case where a facility had used DER credits in the past, but the challenge to that use resulted in an ACO that included an alternative maximum allowable NO_x emission rate. It is not the Department’s intent to provide a remedy such as an additional extension of time to parties with such an alternative maximum allowable NO_x emission rate.

The Department is guided in this extension of time by the time frames that were originally established for the VOC RACT requirements of N.J.A.C. 7:27-16 and the NO_x

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RACT requirements of N.J.A.C. 7:27-19. That is, as explained in the summary of the proposed changes to N.J.A.C. 7:27-16.1A, when the Department adopted the RACT requirements, it provided roughly from ten to 16 months from the operative date of its rulemaking for parties to achieve compliance. Accordingly, the Department proposes to add provisions at N.J.A.C. 7:27-19.3(g)1, 4 and 5 that deadlines established at N.J.A.C. 7:27-19.3(b), 19.13(n), and 19.15(b) must be met by former DER credit users within 12 months after the operative date of this rulemaking, and the compliance demonstration deadline established at N.J.A.C. 7:27-19.15(b) must be met within 24 months after the operative date of this rulemaking. Similarly, the Department proposes to add provisions at N.J.A.C. 7:27-19.3(g)2, 3, 6, 8, 10 and 12 that would require former users of DER credits to meet deadlines for applications and similar submissions within three months after the operative date of this rulemaking. The referenced modified requirements are established at N.J.A.C. 7:27-19.3(d)1 and 2, 19.13(b), 19.21(b), 19.21(e)1, 4 and 6, 19.23(b), 19.23(d)2iv, and 19.23(e)1, 4 and 6. The three-month deadline is consistent with the original time frames for these requirements. Similarly, the Department has determined that it would be appropriate to provide former DER credit users with the same time frame for phased compliance for repowering (N.J.A.C. 7:27-19.21) and for phased compliance for using innovative control technology (N.J.A.C. 7:27-21.23) as was originally afforded. Accordingly, the Department proposes to add provisions at N.J.A.C. 7:27-19.3(g)7, 9 and 11 that would require former users of DER credits to meet deadlines established at N.J.A.C. 7:27-19.21(c)v, (d)4, (e)10 and 3, 19.23(c)4, (d)2iii and 3 within four years after the operative date of this rulemaking. In addition, the Department proposes at N.J.A.C. 7:27-19.3(g)13 to make the current operation cessation deadline established at N.J.A.C. 7:27-19.23(e)9 inapplicable to a former DER credit user who has failed to timely implement agreed-upon innovative control technology. The former DER credit user would be out of compliance at the end of the four-year compliance period for this failure to implement, and would be required to be in compliance with the NO_x emissions limit under this subchapter at that time. The Department is not proposing to extend the N.J.A.C. 7:27-19.3(e) deadline for requesting an extension of time to submit a permit application or facility-specific NO_x control plan.

N.J.A.C. 7:27-19.13 Facility-specific NO_x emissions limits

The Department proposes to remove provisions at N.J.A.C. 7:27-19.13(i) that condition approval of an application for an alternative maximum allowable NO_x emission rate on the use of DER credits to compensate for the difference between the emissions allowed under the alternative maximum allowable NO_x emission rate and the subchapter 19 emission limit. This provision would be rendered moot by the proposed repeal of the OMET program.

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N.J.A.C. 7:27-19.23 Phased compliance - use of innovative control technology

The Department proposes to remove the requirement at N.J.A.C. 7:27-19.23(m) that DER credits be used, after the innovative control technology implementation deadline, to compensate for any actual NO_x emissions in excess of what was projected for the source once the innovative control technology was implemented.

N.J.A.C. 7:27-19.24 MEG alerts

The Department proposes to remove a requirement at N.J.A.C. 7:27-19.23(b)8 that an electric generating utility include a description of the method chosen to compensate for excess NO_x emissions experienced during a MEG alert by using DER credits as well as the requirement itself at N.J.A.C. 7:27-19.24(c) that DER credits be used for this purpose. The Department proposes reserving N.J.A.C. 7:27-19.24(c).

N.J.A.C. 7:27-19.27 Use of NO_x budget allowances by a former DER credit user

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. Information on buying NO_x budget allowances is available from the USEPA's Clean Air Markets Programs (NO_x Budget Program) Web site at <http://www.epa.gov/airmarkets/otc/index.html> and, more specifically, at <http://www.epa.gov/airmarkets/trading/buying.html#otc>. N.J.A.C. 7:27-19.27(a) would permit the use of NO_x budget allowances to achieve compliance with the applicable NO_x RACT emission limits of this subchapter. N.J.A.C. 7:27-19.27(b) would establish the quantification protocol for determining the number of NO_x budget allowances that would need to be retired during any given calendar year. This protocol is based on measurements facilities are already making of their actual emissions. A former DER credit user would calculate the difference between the allowable and the actual emissions for the source/equipment or control apparatus in question in tons per year for the calendar year in question and round this figure up to the nearest whole number to determine the number of NO_x budget allowances required.

N.J.A.C. 7:27-19 Appendix

The Department proposes to add a form as an Appendix to subchapter 19 to be used by a former DER credit user choosing to use NO_x budget allowances to satisfy the requirements of the subchapter. This form, entitled "Notice of Use of NO_x Budget Allowances" requires the submission of information necessary for the Department to verify the proper use of these allowances. It also would include a certification as to the veracity of

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the statements contained therein, and directs the user to submit the form to the correct Air Compliance and Enforcement Regional Office of the Department.

Subchapter 22. Operating Permits

N.J.A.C. 7:27-22.1 Definitions

The Department proposes to add a definition of the term “former DER credit user” to keep rule text simple and concise whenever reference is made to one who used DER credits to satisfy the requirements of this subchapter in the three years immediately preceding the publication of this proposal in compliance with the OMET program rules. The Department also proposes to modify the definition of “potential to emit” to remove references to the use of DER credits.

N.J.A.C. 7:27-22.3 General provisions

The Department proposes to amend N.J.A.C. 7:27-22.3(tt) to provide that DER credits would not be available for use on and after the operative date of this rulemaking. Instead, the Department proposes that one who used DER credits to comply with a NO_x RACT limit could henceforth use NO_x budget allowances to comply with that limit. The Department proposes new text at N.J.A.C. 7:27-22.3(tt)1 and 2 that would refer the reader to N.J.A.C. 7:27-19.27 for an explanation of how these NO_x budget allowances would be used and would require the permittee to file a seven-day-notice of its intent to use these NO_x budget allowances pursuant to N.J.A.C. 7:27-22.22.

The Department also proposes to delete the provisions at N.J.A.C. 7:27-22.3(uu) requiring a permittee to use DER credits to compensate for a failure to timely test equipment or control apparatus and for the operation of equipment without the installation or operation of a required control apparatus. The Department proposes to reserve this subsection.

N.J.A.C. 7:27-22.16 Operating permit contents

The Department proposes removing the provision at N.J.A.C. 7:27-22.16(j) that an operating permit shall authorize compliance through the OMET program.

N.J.A.C. 7:27-22.18 Source emissions testing and monitoring

The Department proposes removing a reference to N.J.A.C. 7:27-30.14(a)5 whereby use of DER credits can be required as compensation for a delay in testing by a permittee.

N.J.A.C. 7:27-22.22 Seven-day-notice changes

The Department proposes to add to the list at N.J.A.C. 7:27-22.22(c) language that would require the filing of a seven-day-notice for the intent to use NO_x budget allowances

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by those currently using DER credits (referred to as “former DER credit users”) to comply with a NO_x RACT limit. The proposal provides further that a former DER credit user choosing to so use NO_x budget allowances would be required to file this seven-day-notice at least seven days before the start of the calendar year for which the NO_x budget allowances are to be used. The Department proposes to remove the requirement for a notice of an increase in the actual emissions of an air contaminant included in the permit set forth at N.J.A.C. 7:27-22.22(d) by deleting N.J.A.C. 7:27-22.22(d)2. This requirement would no longer be necessary if the OMET program is terminated. The Department proposes to similarly remove references to the use of DER credits at N.J.A.C. 7:27-22.22(j) that would no longer be relevant if the OMET program is terminated. The Department also proposes to remove the provision at N.J.A.C. 7:27-22.22(i) that requires the submission of a Notice of Intent to Use DER credits when DER credits are used to comply with a permit limit and to reserve this subsection.

N.J.A.C. 7:27-22.28A Emissions trading

The Department proposes to remove the provision at N.J.A.C. 7:27-22.28A(b) that a permittee may implement an OMET program without prior approval as this provision would no longer be relevant if the OMET program is terminated.

N.J.A.C. 7:27-22.30 Renewals

The Department proposes to remove the provision at N.J.A.C. 7:27-22.30(d)7 that an application for renewal of an operating permit must include a summary of all DER generation and use since the most recent permit was issued.

Subchapter 30. Open Market Emissions Trading

The Department proposes to repeal this subchapter in its entirety. These are the rules that govern the OMET program.

Subchapter 31. NO_x Budget Program

N.J.A.C. 7:27-31.2 Definitions

The Department proposes to delete the definition of the term “DER credit” since the proposed revisions would remove this term from Subchapter 31. The term “DER credit” would only be used in this subchapter in the definition of the term “former DER credit user” which adequately explains the term “DER credit.”

The Department also proposes to add a definition of the term “former DER credit user” to keep rule text simple and concise whenever reference is made to one who used DER

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credits to satisfy the requirements of this subchapter in the three years immediately preceding the publication of this proposal in compliance with the OMET program rules.

N.J.A.C. 7:27-31.3 Applicability and general provisions

The Department proposes to amend N.J.A.C. 7:27-31.3(l) to allow for the use of NO_x budget allowances by those currently using DER credits (referred to as “former DER credit users”). The provision currently limits the use of these allowances for the purposes of meeting the requirements of NO_x budget program and provides that such allowances cannot be used to authorize the exceedance of the limitations of a permit or of another applicable rule or regulation.

N.J.A.C. 7:27-31.6 Interface with the open market emissions trading program

The Department proposes to amend this rule, through repeal and a new rule, headed “**Use of NO_x budget allowances by former users of DER credits.**” This would reflect the proposed deletion of the provisions that currently govern the conversion of NO_x budget allowances into DER credits and their replacement with provisions for the use of NO_x budget allowances to comply with a NO_x RACT limit for which the DER credits had been used. Specifically, the Department proposes to allow the use of the NO_x budget allowances to conform with the requirements of N.J.A.C. 7:27-19.27, described above, and that the permittee file a seven-day-notice of its intent to use these NO_x budget allowances. In addition, the Department proposes to remove the provisions at N.J.A.C. 7:27-31.6(b) that govern the conversion of DER credits to NO_x budget allowances, as they would no longer be relevant if the OMET program is terminated.

N.J.A.C. 7:27-31.8 Claims for incentive allowances

The Department proposes to remove the provision at N.J.A.C. 7:27-31.8(d) that allowed for the awarding of DER credits in lieu of incentive allowances and proposes to reserve this subsection. The Department also proposes to remove the provisions at N.J.A.C. 7:27-31.8(f)5 establishing the procedure whereby a claimant would specify in a claim for incentive allowances a preference for DER credits and proposes to reserve this paragraph. These provisions would no longer be relevant if the OMET program is terminated.

N.J.A.C. 7:27-31.12 Early reductions

The Department proposes to remove references to DER credits at N.J.A.C. 7:27-31.12(c)1 i and ii. The Department also proposes to remove the provision at N.J.A.C. 7:27-31.12(p)3 that the Department shall provide information to the NO_x Allowance Tracking System (NATS) Administrator and to USEPA Region II as to whether an owner or operator elected to receive NO_x budget allowances or DER credits, and proposes to reserve this

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paragraph. These provisions would no longer be relevant if the OMET program is terminated.

Chapter 27A. Air Administrative Procedures and Penalties

Subchapter 3. Civil Administrative Penalties and Requests for Adjudicatory Hearings

N.J.A.C. 7:27A-3.2 Definitions

The Department proposes to delete the definition of the term “discrete emission reduction” or “DER” as this term will no longer be used in this subchapter if the OMET program is terminated.

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

The Department proposes to remove the provisions at N.J.A.C. 7:27A-3.10(i) whereby the Department could exercise its discretion to accept DER credits in settlement of a monetary penalty. The Department proposes to reserve this subsection. The Department also proposes to delete all penalty provisions relating to the OMET program-related requirements in Subchapters 8, 16, 19, and 22. These penalty provisions are set forth in the Civil Administrative Penalty Schedule at N.J.A.C. 7:27A-3.10(m)8, 16, 19 and 22, respectively. The Department also proposes to remove the penalty provisions for violations of the OMET program rules at N.J.A.C. 7:27-30. These penalty provisions are set forth at N.J.A.C. 7:27A-3.10(m)30.

Social Impact

The Department had anticipated, as it explained in the Social Impact statement of the July 6, 1999 OMET proposal (Phase 2 OMET proposal) (31 N.J.R. 1671(a) at 1680 - 1681), that the OMET program would have been socially beneficial. The OMET program was expected to encourage sources with lower compliance costs to achieve a greater level of emission reductions than would result from the traditional command-and-control approach and to allow sources with higher compliance costs to purchase reductions from those lower compliance cost sources. The net effect was expected to be the same level of overall air quality benefit but for a smaller total cost, or an even greater air quality benefit for the same cost, making the regulatory structure more cost effective and flexible while benefitting the environment. Due to uncertainty regarding the validity of the DER credits generated under the OMET program, however, it is unclear what social benefits were realized.

A review by the USEPA of 10 early credit generation strategies (of credits generated between May 1, 1992 and August 6, 1996) found problems with all 10 strategies, suggesting

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that many DER credits could be invalid. That is, they may not have been generated in accordance with the Department's OMET program rules at N.J.A.C. 7:27-30. Furthermore, there was never any independent verification that the information entered into the OMET Registry was done correctly by the registry operator. Thus, it is not clear what the Department can conclude from the historical use of these DER credits. The OMET Registry does reflect that a number of parties took advantage of the increased compliance flexibility the OMET program afforded, but whether the net effect of the program was a cost-effective compliance with air quality standards is far from clear, given the problems that beset the program. To the extent that the program indeed had a positive social impact, ending it now could have a negative social impact of the same magnitude. It is more likely, however, that the repeal of the OMET program, by eliminating any possibility of loss of environmental benefits from other Department air quality improvement measures, would have a positive social impact. Either way, it is virtually impossible to quantify the social impact of the repeal of this program.

Economic Impact

The repeal of the Open Market Emissions Trading Program could have a direct negative economic impact on some of those who have elected to use DER credits in the past, or who would have elected to do so in the future. Since the use of these DER credits is predicated on their purchase being less costly than the compliance alternative, former DER credit users might have to spend more to comply with the NO_x RACT and VOC RACT requirements if they lose the option of using DER credits. (It should be noted that this is an extremely small population of about 12 facilities, and, given that most sources had already complied with NO_x RACT and VOC RACT requirements when the OMET program went into effect, the more speculative population of future DER credit users is likely to also be quite small.) These former DER credit users may be able to obtain with alternate NO_x or VOC emission limits under N.J.A.C. 7:27-19.13 and 16.17, respectively, which would represent an economic savings for them, since they would no longer need to purchase DER credits to comply with the NO_x RACT and VOC RACT requirements. For those applying for alternate NO_x or VOC emission limits, this savings would be offset to some extent by the cost of submitting the justification for the alternate NO_x or VOC emission limits. For those unable to qualify for alternate NO_x or VOC emission limits, the negative economic impact of repealing the OMET program would be the difference between the cost of the DER credits that would have been used and the current cost of complying with the NO_x RACT and VOC RACT requirements. The supply of DER credits was not keeping up with the demand for them in the past year or so. This meant that potential buyers of DER credits were not always able to purchase them and suggests that the price of DER credits could have escalated. It is

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not clear, therefore, that compliance by using DER credits would have continued to be less expensive than adding air pollution control or making the requisite modifications to equipment.

An extensive analysis of the cost of complying with the NO_x RACT requirements was developed for the Economic Impact statement in the February 16, 1993, proposal of the Department's NO_x RACT rules at N.J.A.C. 7:27-19 (25 N.J.R. 631(a) at 642 through 644) (1993 NO_x RACT proposal). As the Department explained in the 1993 NO_x RACT proposal, NO_x RACT compliance costs vary, depending upon the type of source regulated and the type of technology which the owner or operator of the source employs to meet the emission limits. In addition, several factors influencing cost vary with circumstances specific to a given source at a given site. These factors include, for any particular source, the ease with which the control technology can be designed and installed, the rate of the uncontrolled emissions, the precise extent to which the control technology will reduce NO_x emissions and the remaining useful life of the source operation. Due to the cost variations resulting from these source-specific factors, the estimates of compliance costs must be expressed as generally applicable ranges, rather than as single dollar figures. Table A below reflects the cost projections from the 1993 NO_x RACT proposal, as well as recent reports which were used as the basis for other changes to N.J.A.C. 7:27-19 that the Department has proposed for additional NO_x emissions reductions. These reports are referenced in the footnotes to the table. The primary cost information was obtained from a report entitled Status Report on NO_x Controls for Gas Turbines, Cement Kilns, Industrial Boilers and Internal Combustion Engines, Technologies and Cost Effectiveness, which was prepared by the Northeast States for Coordinated Air Use Management (NESCAUM), Boston, December 2000 (hereinafter referred to as "NESCAUM report"). Additional cost information was obtained from EPA Alternative Control Techniques (ACT) Documents, published in 1997. The Department has used the Consumer Price Index (CPI) to adjust the 1997 EPA figures and the 2000 NESCAUM figures to 2002 dollars (the most recent year for which the CPI is available). The Department obtained this CPI from a table for "All Urban Consumers," (CPI-U), published by the U. S. Department of Labor, Bureau of Labor Statistics, containing data from 1913 to the present day. The table presents information for each month of a year with an annual average for that year. The percentage increase in the current CPI relative to any prior year can be determined using the following formula:

$$\text{Percentage Increase} = 100 \times \left[\frac{\text{avg 2002 CPI-U} - \text{avg CPI-U for prior year}}{\text{avg CPI-U for prior year}} \right]$$

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CPI adjustments to the cost estimates in the Department's 1993 NO_x RACT proposal (not included herein) suggest that the cost of compliance has remained relatively stable, with some decrease as technology improves and becomes less expensive. It should also be noted that the cost of compliance with some of these NO_x RACT requirements is not relevant to this proposal where DER credits were not used for compliance purposes.

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TABLE A
Costs of NO_x Emissions Control Technology to Achieve NO_x RACT Compliance
 Cost Effectiveness (\$/ton NO_x Removed)

	(1993 NO _x RACT proposal impact statement) ¹	EPA 1997 ACT reports ²	NESCAU M 2000 report ³	Column 2 or 3 adjusted to 2002 basis using CPI ⁴
Boilers ⁵				
<u>Utility Boilers</u>				
LNB with OFA (coal)	570-1500	165-3300	730-3000	763-3135 ⁶
Seasonal natural gas	1300-1600		NL 1500-1850 ⁷	1568-1933
<u>Non-Utility Boilers (20-50)</u>				
Annual tune up	500-3000	NL	NL 500-1000 ⁸	523-1045
<u>Non-Utility Boilers (50-100)</u>				
Low NO _x burner (No.2 oil)	500-2000	460-1900	NL	516-2130
LNB with FGR (other liquid fuel)	1500-4000	760-2000	NL	852-2242
<u>Non-Utility Boilers (>100)</u>				
LNB with OFA	500-2000		730-3000	763-3135
Seasonal natural gas	1300-1600		1500-1850	1568-1933
Indirect Heat Exchangers ⁹	500-2400	1530-2820		1806-3328
Stationary Internal Combustion Engines ¹⁰				
<u>Rich Burn, gaseous fuel</u>				
NSCR	500-1500	250-1500	NL	280-1682
<u>Lean Burn, gaseous fuel</u>				
LEC	200-500		245-957	251-1000
<u>Lean Burn, liquid fuel</u>				

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ITR	300-1000		245-275	251-282
Stationary Gas Turbines				
Diluent injection	500-2000		638-1217	667-1272
DLN	50-600		107-1523	112-1592
Glass Furnaces				
LNB and OFA ¹¹	570-1500	165-3300	NL	185-3700

1. 25 N.J.R. 631(a), 2/16/93
2. EPA Alternative Control Techniques (ACT) Documents:
 - a. Boiler costs, utility: ACT Document - NO_x Emissions from Utility Boiler; (EPA-453/R-94-023); Section 6.3.2.2, 3/18/97.
 - b. Boiler costs, non-utility: ACT Document - NO_x Emissions from Industrial/Commercial/Institutional (ICI) Boilers (EPA-453/R-94-022); Table 2-7. 3/18/97.
 - c. Indirect Heat Exchanger cost: ACT Document – NO_x Emissions from Process Heaters (Revised) (EPA-453/R-93-034); Table 6-8. 10/2/95.
 - d. Engine costs: ACT Document - Internal Combustion NO_x Part 1 & 2 (EPA-453/R-93-032); Figure 2-3. 3/21/97.
3. Status Report on NO_x Controls for Gas Turbines, Cement Kilns, Industrial Boilers and Internal Combustion Engines, Technologies and Cost Effectiveness. Northeast States for Coordinated Air Use Management, Boston, December 2000.
4. Consumer Price Index (CPI-U) U.S. Department of Labor, Bureau of Labor Statistics
 - 1995 Average 152.4
 - 1997 Average 160.5
 - 2000 Average 172.2
 - 2002 Average 179.9
5. Boiler ratings are in millions of BTU/hr (at higher heating value of the fuel)
6. Column 3 converted
7. Escalated using cost of natural gas
8. Average of several vendor quotations for cost of tune up of a single boiler (2003 dollars)
9. 26 N.J.R. 3308, August 15, 1994
10. Control techniques were not specified in the proposal document
11. Costs equivalent to utility boiler

Definitions of acronyms used in Table A:

NL = Not listed in the report
 LNB = Low NO_x burner
 OFA = Overfire air
 FGR = Flue gas recirculation
 NSCR = Non selective catalytic reduction
 ITR = Injection timing retard
 DLN = Dry low NO_x combustor

Similarly, an extensive analysis of the cost of complying with the VOC RACT requirements was developed for the Economic Impact statement in the August 1, 1993, proposal of the Department's VOC RACT rules at N.J.A.C. 7:27-16 (25 N.J.R. 3339(a) at

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3364 through 3367) (“1993 VOC RACT proposal”). As the Department explained in the 1993 VOC RACT proposal, VOC RACT compliance costs will also vary, depending upon the type of source regulated and the type of technology which the owner or operator of the source employs to meet the emission limits.

In terms of today’s costs, the Department has determined that, although technology has improved significantly in the decade since the 1993 VOC RACT proposal was published, with some variation these costs have remained essentially constant, once adjusted for the ensuing increases in the cost of living. Accordingly, the Department has applied the change in the "Consumer Price Index" (CPI) from 1993 to the present day to develop a factor to calculate 2003 compliance costs. These costs are summarized and reflected in Table B below. It should be noted, as is the case in Table A, that the cost of compliance with some of these VOC RACT requirements is not relevant to this proposal where DER credits were not used for compliance purposes.

TABLE B
Costs of VOC Emissions Control Technology to Achieve VOC RACT Compliance
 Cost Effectiveness (\$/ton VOC Removed)

section	description	1993 costs \$/TON	2002 costs \$/TON ¹
16.4	Transfer Operations	\$2,000 to \$10,000	\$2,490 to \$12,450
16.7	Using compliant coatings	\$500	\$623
"	Install control apparatus	\$3,000	3,735
16.11	Combustion sources - adjust process	\$500 to \$3,000	\$623 to \$3,735
"	" " - retrofit burners	\$30,000 to \$70,000	\$37,350 to \$87,150
16.13	Flares (already in compliance with RACT)	\$ 0	\$ 0
"	" Complete replacement of old unit)	\$75,000 to \$500,000	\$93,375 to \$622,500

All other processes must be reviewed on a case by case basis

- Percentage Increase = $100 \times \frac{[\text{avg } 2002 \text{ CPI-U} - \text{avg } 1993 \text{ CPI-U}]}{[\text{avg } 1993 \text{ CPI-U}]}$
 Percentage Increase = $100 \times \frac{[179.9 - 144.5]}{[144.5]} = 24.5 \%$

In addition to those who elected to use DER credits to comply with VOC and NO_x RACT requirements, the proposed repeal of the OMET program will impact those who were required to purchase DER credits. The elimination of the requirements to purchase DER credits will have a positive economic impact on those parties.

Environmental Impact

It would be difficult, if not impossible, to quantify the environmental impact of repealing the OMET program. To the extent that the problems with the OMET program

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resulted in a negative environmental impact, the proposed repeal would be expected to have a positive environmental impact.

The Environmental Impact statement in the July 6, 1999, proposal of the Department's OMET rules at N.J.A.C. 7:27-30 (31 N.J.R. 1671(a) at 1681 - 1682) (Phase 2 OMET proposal) suggests that there had been an environmental benefit from the inception of the OMET program in August 1996 through April 1999, based on an analysis of the number of DER credits generated, used and retired. Using a simple calculation of tons generated minus tons used to produce realized reductions, the Phase 2 OMET proposal indicated realized emission reductions of 462 tons for the second half of 1996, and realized emission reductions of 3,429 tons and 3,509 tons, for the years 1997 and 1998, respectively. The Phase 2 OMET proposal predicted even greater realized reductions with the implementation of the second phase of the OMET program.

It is not clear to what extent one can rely upon the accuracy of these projections, however, for the very reasons that the Department proposes now to terminate this program. That is, for example, there are concerns regarding the validity of the credits generated, whether the number of credits generated was overstated and whether credits generated in a non-ozone season were improperly used during an ozone season. In addition, not all of the subsequent environmental progress in controlling emissions can be attributed to the impetus of the OMET program. Some of the improvements made by sources would have been made anyhow, with or without the incentive of generating credits. For these reasons, it would be difficult to quantify what the environmental impact of the program has been and what the environmental impact of ending it would be. To the extent that the repeal of the OMET program would result in facilities installing emission controls that they would not have otherwise installed, the Department expects this proposal to have an actual and quantifiable positive impact on the environment.

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 proposed repeal of New Jersey's OMET program rules would

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not impose standards or requirements that exceed any Federal standards or requirements. Accordingly, neither Executive Order No. 27 (1994) nor N.J.S.A. 52:14B-23 requires a cost-benefit analysis.

Jobs Impact

As is discussed above in the Economic Impact statement, the proposed repeal of the OMET program rules may have a negative, but very limited, economic impact, by requiring some former DER credit users to either expend funds to come into compliance with VOC or NO_x RACT requirements or to purchase and use NO_x budget allowances to comply with NO_x RACT requirements. Each member of the regulated community currently using DER credits will make adjustments to accommodate whatever cost the repeal of the program may represent consistent with its own specific needs and situation. These entities might respond in a number of ways to absorb any loss of income this might entail, other than by reducing staff. For example, a company could decrease employment or it could elect to reduce other business expenditures, pay less in dividends or other distributions, decrease compensation to its employees or officers, or increase the cost of goods and services sold. Because each member of the regulated community may respond differently, it is not possible to accurately estimate the extent, if any, to which the costs these persons incur will affect employment. The limited number of facilities (about 12) and the relatively low use of DER credits implies a low impact on jobs.

Agriculture Industry Impact

Pursuant to the requirements of P.L. 1998, c.48, adopted on July 2, 1998, the Department has evaluated this proposed rulemaking to determine the nature and extent to which the proposed amendments, new rule and repeals would impact the agriculture industry. The proposed rulemaking, which would repeal the open market emissions trading system, would have no impact upon the agriculture industry.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed repeals and amendments would not impose additional reporting, recordkeeping or other compliance requirements on small businesses (defined in the Regulatory Flexibility Act as “any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full-time employees.” N.J.S.A. 52:14B-17.) The proposed repeal

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of the OMET program and the extension of alternative compliance options to former DER credit users would only affect those businesses that had used DER credits in compliance with the Open Market Emissions Trading Program rules in the three years immediately preceding the publication of this proposal. None of the parties identified by the Department from the OMET Registry as former OMET participants who might qualify as “former users of DER credits” for the purposes of this proposed rulemaking are small businesses as defined in the Regulatory Flexibility Act, as each employs more than 100 full-time employees. Accordingly, N.J.S.A. 52:14B-19 does not require further analysis of this proposed rulemaking.

Smart Growth Impact

Executive Order No. 4 (2002) requires State agencies which adopt, amend or repeal State regulations to include in the rulemaking document a Smart Growth Impact statement that describes the impact of the proposed rule on the achievement of smart growth and implementation of the State Development and Redevelopment Plan (State Plan). The proposed Open Market Emissions Trading Program rulemaking does not relate to the State’s official land use and development policies in a way that would either encourage or discourage any development or redevelopment in this State contrary to the guiding principles of the State Plan. As a result, the Department does not expect this rulemaking to have an impact on the State’s achievement of Smart Growth.

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Full text of the proposed repeals may be found in the New Jersey Administrative Code at N.J.A.C. 7:27-18.2A, 18.11, 30 and 31.6.

Full text of the proposed new rule and amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

7:27-1.32 Request for an adjudicatory hearing

(a) Any [person who is aggrieved with respect to any of the following] **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 [, as follows:

1. If the person is an applicant, registrant, or permittee, and is aggrieved with respect to **] regarding** a decision made by the Department to:

Recodify existing i. - iii. as **1. - 3.** (No change in text.)

[iv.]**4.** Deny the request for a stay under N.J.A.C. 7:27-1.33]; or

2. If the person is the generator or holder of a discrete emission reduction (DER) credit generated pursuant to N.J.A.C. 7:27-30, and is aggrieved with respect to a finding made by the Department that the credit is invalid].

(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

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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. [If the owner or operator is using DER credits pursuant to the “permit insurance” provisions at N.J.A.C. 7:27-30.14(d) and (e) for compliance, the increase in allowable emissions due to this use of DER credits shall be included in the determination of potential to emit for the duration of the use period.] 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, [DER credits generated pursuant to N.J.A.C. 7:27-30.4,] 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) No approval by the Department of a change to a permit is required for a permittee to use DER credits for compliance in accordance with N.J.A.C. 7:27-30. However, if DER credits are to be used for compliance with emission offset requirements under N.J.A.C. 7:27-18 and 30.14(g), the permit must specifically allow such use.

(l) In accordance with N.J.A.C. 7:27-30.14(a)5 and 6, a permittee shall compensate for the following through use of DER credits:

1. Failure to perform timely testing in accordance with N.J.A.C. 7:27-8.28 of the VOC and/or NO_x emissions of equipment or control apparatus; and
2. Operation of equipment, if the permittee has failed to install or operate a control apparatus required by a permit.]

(k) - (l) (Reserved)

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

(o) [Notwithstanding (c) above, a] **On and after (the operative date of this rulemaking), no** permittee may use DER credits to comply with a VOC or NO_x permit limit established pursuant to this subchapter[, provided that:

1. Such use is allowed pursuant to N.J.A.C. 7:27-30.14(a)3, (b), (c)6 and (d);
2. The permittee conforms with the applicable seven-day-notice requirements at N.J.A.C. 7:27-8.20;
3. If the use is a “permit insurance” use, the permittee conforms with the conditions for “permit insurance” uses set forth at N.J.A.C. 7:27-30.14(d); and
4. The permittee complies with all applicable requirements for DER credit use set forth at N.J.A.C. 7:27-30]. **Notwithstanding (c) above, a former DER credit user who**

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used DER credits to comply with a NO_x RACT limit established pursuant to N.J.A.C. 7:27-19, may, on and after (the operative date of this rulemaking) 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:

- 1. The use of such NO_x budget allowances conforms with the requirements at N.J.A.C. 7:27-19.27; and**
- 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) [If the applicant intends to use DER credits to fulfill emission offset requirements under N.J.A.C. 7:27-18, the applicant shall indicate this in the permit application in accordance with N.J.A.C. 7:27-30.14(g).] **(Reserved.)**
- (s) (No change.)

7:27-8.17 Changes to existing permits and certificates

- (a) - (d) (No change.)
- [(e) No change to a permit is required for a permittee to use DER credits for compliance in accordance with N.J.A.C. 7:27-30. However, if DER credits are to be used for compliance with emission offset requirements under N.J.A.C. 7:27-18 and 7:27-30.14(g), the permit must specifically allow such use. If the permit does not allow such use, a permit revision under N.J.A.C. 7:27-8.18 is required.]

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 [a potential increase in the actual emissions of an air contaminant included in the permit due to compliance using DER credits under N.J.A.C. 7:27-30, such as for “permit insurance” pursuant to N.J.A.C. 7:27-30.14(d)] **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 for which the NO_x budget allowances are to be used.**
- (c) - (h) (No change.)

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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. [Any emission reduction resulting from the disapproved activities shall not be used as the basis for generating a DER credit under the Open Market Emission Trading Program at N.J.A.C. 7:27-30.]

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

7:27-8.28 Delay of testing

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

[(c) A permittee who delays testing (even if the delay is approved by the Department) is subject to N.J.A.C. 7:27-30.14(a)5, pursuant to which the permittee may be required to provide compensation through use of DER credits.]

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

7:27-16.1 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.

...

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

(a) - (e) (No change.)

(f) [The] **On and after (the operative date of this rulemaking), 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 [reductions (DERs) in accordance with N.J.A.C. 7:27-30] **reduction (DER) credits.**

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(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) 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);**
- 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);**
- 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);**
- 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);**
- 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);**
- 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);**
- 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);**
- 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);**
- 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);**
- 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);**
- 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);**
- 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);**
- 13. The compliance deadline established at N.J.A.C. 7:27-16.17(b)2 is (12 months after the operative date of this rulemaking);**
- 14. The emission reduction deadline established at N.J.A.C. 7:27-16.17(f)2 is (12 months after the operative date of this rulemaking);**
- 15. The Control Measure Plan preparation deadline established at N.J.A.C. 7:27-16.21(a) is (three months after the operative date of this rulemaking);**

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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); 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).

(h) The provisions of (g) above do not apply to a former DER credit user who used DER credits in satisfaction of either 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 an Administrative Consent Order with the Department to allow VOC-emitting units to operate under an alternative VOC control plan without the requirement to hold VOC DER credits.

[(g)] **(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. [As a condition of an approval of any application for an alternative VOC control plan submitted to the Department pursuant to this section after August 2, 1996, the owner or operator shall use discrete emission reduction (DER) credits in accordance with N.J.A.C. 7:27-30 to compensate for the difference between the emissions allowed under the alternative VOC control plan and under the emission limit which would otherwise apply under this subchapter.]

(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

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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) [The] **On and after (the operative date of this rulemaking), 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) [in accordance with N.J.A.C. 7:27-30]. **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) 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);**
- 2. The permit application submission deadline established at(d)1 above is (three months after the operative date of this rulemaking);**
- 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);**
- 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);**
- 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);**
- 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);**
- 7. The completion of repowering date referenced at N.J.A.C. 7:27-19.21(c)2v and 19.21(d)4 is no later than (four years after the operative date of this rulemaking);**

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- 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);**
 - 9. The operation cessation deadline established at N.J.A.C. 7:27-19.21(e)10 is (4 years after the operative date of this rulemaking);**
 - 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);**
 - 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 (4 years after the operative date of this rulemaking);**
 - 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); 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), 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) at (g) above and the provisions of (g)1 through 13 above do not apply to a former DER credit user who used DER credits in satisfaction of either 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 an Administrative Consent Order 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 NO_x DER credits.**

Recodifying existing (h) and (i) as **(i) and (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. [As a condition of an approval of any application for an alternative maximum allowable NO_x emission rate submitted to the Department pursuant to this section after August 2, 1996, the owner or operator shall use discrete emission reductions (DERs) in accordance with N.J.A.C. 7:27-30 to

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compensate for the difference between the emissions allowed under the alternative maximum allowable NO_x emission rate and under the emission limit which would otherwise apply under this subchapter.]

(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[; and] .

[10. Compensate, through use of DER credits in accordance with N.J.A.C. 7:27-30, for the amount (if any) by which the source's actual NO_x emissions after the date on which the innovative control technology is required to be implemented (as stated in (c)5v above) exceed the emissions which would have resulted if the source had attained the rate of NO_x emissions stated in (c)3 above].

(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 emissions 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;

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- 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[; and
 - 8. A description of the method by which the owner or operator of the electric generating unit has provided or will provide compensatory reductions in NO_x emissions as required under (c) below].
- [(c) The owner or operator of the electric generating unit shall use DER credits in accordance with N.J.A.C. 7:27-30 to compensate for the excess NO_x emissions during the MEG alert. The ratio of the amount of NO_x emission increases required to be compensated for with credits to the amount of the excess NO_x emissions calculated under (b)6 above shall be 1.3:1.]

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

(a) A former DER credit user 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 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). 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 N.J.A.C. 7:27-19.7(c), Table 5. If more than one fuel is burned, determine the allowable emissions separately for each fuel and then sum these allowable emissions;**
- 2. 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.**

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- 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;**
- 3. 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**
- 4. 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.**

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APPENDIX TO SUBCHAPTER 19



**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): _____

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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

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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. [If the owner or operator is using DER credits pursuant to the “permit insurance” provisions at N.J.A.C. 7:27-30.14(d) and (e) for compliance, the increase in allowable emissions due to this use of DER credits shall be included in the determination of potential to emit for the duration of the use period.] However, the determination shall not include the holding of any of the following by the owner or operator: emission reductions that are banked pursuant to N.J.A.C. 7:27-18.8[, DER credits generated pursuant to N.J.A.C. 7:27-30.4,] or NO_x allowances allocated pursuant to N.J.A.C. 7:27-31.7.

7:27-22.3 General provisions

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

(tt) [Notwithstanding (qq) above, a] **On and after (the operative date of this rulemaking), no** permittee may use DER credits to comply with a VOC or NO_x permit limit established pursuant to this subchapter[, provided that:

1. Such use is allowed pursuant to N.J.A.C. 7:27-30.14(a)3, (b), (c)6 and (d);
2. The permittee conforms with the applicable seven-day-notice requirements at N.J.A.C. 7:27-22.22;
3. If the use is a “permit insurance” use, the permittee conforms with the conditions for “permit insurance” uses set forth at N.J.A.C. 7:27-30.14(d); and

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4. The permittee complies with all applicable requirements for DER credit use set forth at N.J.A.C. 7:27-30]. **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, may, on and after (operative date of this rulemaking) 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:**

- 1. The use of such NO_x budget allowances conforms with the requirements at N.J.A.C. 7:27-19.27; and**
- 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) [In accordance with N.J.A.C. 7:27-30.14(a)5 and 6, a permittee shall compensate for the following through use of DER credits:

1. Failure to perform timely testing in accordance with N.J.A.C. 7:27-22.18(k) of the VOC and/or NO_x emissions of equipment or control apparatus; and
2. Operation of equipment, if the permittee has failed to install or operate a control apparatus required by a permit.] **(Reserved.)**

(vv) (No change.)

7:27-22.16 Operating permit contents

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

(j) An operating permit [shall authorize compliance through open market emissions trading pursuant to N.J.A.C. 7:27-30. In addition, an operating permit] may contain provisions for [other] 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.)

[(m) A permittee who delays testing (even if the delay is approved by the Department) is subject to N.J.A.C. 7:27-30.14(a)5, pursuant to which the permittee may be required to provide compensation through use of DER credits.]

7:27-22.22 Seven-day-notice changes

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

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- (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; [or]
 5. 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**
 - 6. 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 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[; or
 2. Notice of an increase in the actual emissions of an air contaminant included in the permit, including an increase compensated for through use of DER credits under N.J.A.C. 7:27-30, such as for “permit insurance” pursuant to N.J.A.C. 7:27-30.14(d)].
- (e) - (h) (No change.)
- (i) [To be administratively complete, a notice submitted pursuant to (d)2 above for compliance with a permit limit through use of DER credits, under the “permit insurance” provisions of the open market emission trading rules at N.J.A.C. 7:27-30, shall be a copy of the Notice of Intent to Use submitted for the use in accordance with N.J.A.C. 7:27-30.15 and 19.] **(Reserved.)**
- (j) No permittee shall make a change at a facility[, including use of a DER for compliance,] 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.

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

7:27-22.28A Emissions trading

(a) (No change.)

(b) [A permittee may implement an open market emissions trading program pursuant to N.J.A.C. 7:27-30 without prior approval.] A permittee may [also] 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 [;and

7. A summary of all DER generation and use since the date of issuance of the most recent operating permit] .

SUBCHAPTERS 28 THROUGH [29] **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:

•••

["DER credit" means a discrete emission reduction credit pursuant to N.J.A.C. 7:27-30.]

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...

“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 N.J.A.C. 7:27-19.

...

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 below.** [The] **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, may, on and after (operative date of this rulemaking) 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) [A person eligible to receive an incentive allocation may, pursuant to the Open Market Emissions Trading (OMET) Program rules at N.J.A.C. 7:27-30, elect to receive DER credits instead. In such case, the person shall also file a Notice of DER Credit Generation as required by the OMET Program rules, and the Department shall request that the NATS Administrator transfer any allowance that would otherwise have been allocated to the claimant into a retirement account.] **(Reserved.)**

(e) (No change.)

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(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. [Specification as to whether the claimant wishes to receive credit for the electric generation or savings as allowances or as DER credits. If the claimant wishes to receive DER credits, the claimant shall include the total number of DER credits claimed to have been generated pursuant to N.J.A.C. 7:27-30 during the control period] **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 [DER credits pursuant to N.J.A.C. 7:27-30 or] emission offsets pursuant to N.J.A.C. 7:27-18; or
 - ii. Proof of permanent retirement of any [DER credits generated pursuant to N.J.A.C. 7:27-30 and 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[; and].
- [3. Specification of whether each owner or operator has elected to receive the allowances or to accept an amount of DER credits, equivalent in value to the early reduction allowances.]

CHAPTER 27A. AIR ADMINISTRATIVE PROCEDURES AND PENALTIES

SUBCHAPTER 3. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

Please note: The Department has made every effort to ensure that this text is identical to the official legally effective version of this proposal, set forth in the August 4, 2003 New Jersey Register. However, should there be any discrepancies between this text and the official version of the proposal, the official version will prevail.

7:27A-3.2 Definitions

The following words and terms, when used in this subchapter, 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.

• • •

["Discrete emission reduction" or "DER" has the meaning set forth in N.J.A.C. 7:27-30.2.]

• • •

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

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

(i) [The Department may, in its discretion, accept discrete emission reductions (DER) credits, that have been verified pursuant to N.J.A.C. 7:27-30.10, in full or partial settlement of a monetary penalty in accordance with the procedures for credit use at N.J.A.C. 7:27-30. In determining whether to allow the use of DER credits in full or partial settlement of a penalty and the appropriate amount to accept, the Department shall consider whether the cost associated with acquiring the discrete emission reductions provides a sufficient deterrent to future violation.] **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 no legal effect.

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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:

[Citation	Rule Summary	
N.J.A.C. 7:27-8.3(l)	Use DER credits for failure to perform timely testing or failure to install and/or operate control apparatus	Violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.]

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:

...

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Citation	Class	First	Second	Third	Fourth and
		Offense	Offense	Offense	Each Subsequent Offense
...					
[N.J.A.C. 7:27- 16.17(m)]	Compensate with DERs				
	Class: Surface Coating and graphic arts operations	See N.J.A.C. 7:27A-3.10(m)16 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-16.7(c), (d), (g), (h), (i) or (j).			
	Class: Non-utility of Utility Boilers	See N.J.A.C. 7:27A-3.10(m)16 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-16.8(b)1 or 2.			
	Class: Stationary Gas Turbines	See N.J.A.C. 7:27A-3.10(m)16 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-16.9(b) and (c).			
	Class: Stationary Internal Combustion Engine	See N.J.A.C. 7:27A-3.10(m)16 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-16.10(b).			
	Class: Asphalt Plants	See N.J.A.C. 7:27A-3.10(m)16 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-16.11(b).			
	Class: Flares	See N.J.A.C. 7:27A-3.10(m)16 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-16.13(a).			
	Class: Other Source Operations	See N.J.A.C. 7:27A-3.10(m)16 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-16.16(c).			
	Class: Petroleum Solvent Dry Cleaning	See N.J.A.C. 7:27A-3.10(m)16 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-16.20(a).]			
...					

17. - 18. (No change.)

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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	First Offense	Second Offense	Third Offense	Fourth and Each Subsequent Offense
...					
[N.J.A.C. 7:27- 19.13(i)	Compensate with DERs				
	Class: Utility Boilers	See N.J.A.C. 7:27A-3.10(m)19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.4(a).			
	Class: Stationary Gas Turbines	See N.J.A.C. 7:27A-3.10(m)19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.5(a) or (b).			
	Class: Non-utility Boilers and other Indirect Heat Exchangers	See N.J.A.C. 7:27A-3.10(m)19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.7(b) or (c).			
	Class: Stationary Internal Combustion Engines	See N.J.A.C. 7:27A-3.10(m)19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.8(a), (b) or (c).			
	Class: Asphalt Plants	See N.J.A.C. 7:27A-3.10(m)19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.9(a).			
	Class: Glass Manufacturing Furnaces	See N.J.A.C. 7:27A-3.10(m)19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.10(a) or (b).]			
...					

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Citation	Class	Fourth and Each			
		First Offense	Second Offense	Third Offense	Subsequent Offense
...					
[N.J.A.C. 7:27-19.23(e)10	Compensate with DERs				
	Class: Utility Boilers	See N.J.A.C. 7:27A-3.10(m)19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.4(a).			
	Class: Stationary Gas Turbines	See N.J.A.C. 7:27A-3.10(m)19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.5(a) or (b).			
	Class: Non-utility Boilers and other Indirect Heat Exchangers	See N.J.A.C. 7:27A-3.10(m)19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.7(b) or (c).			
	Class: Stationary Internal Combustion Engines	See N.J.A.C. 7:27A-3.10(m)19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.8(a), (b) or (c).			
	Class: Asphalt Plants	See N.J.A.C. 7:27A-3.10(m)19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.9(a).			
	Class: Glass Manufacturing Furnaces	See N.J.A.C. 7:27A-3.10(m)19 for the calculation of civil administrative penalties for violations of N.J.A.C. 7:27-19.10(a) or (b).]			
N.J.A.C. 7:27-19.24(b)	Report	\$500	\$1,000	\$2,500	\$7,500
[N.J.A.C. 7:27- 19.24(c)	Compensate with DERs				
	Actual emissions (pounds per million BTU)				
	Less than 25 percent over the allowable standard	\$8,000	\$16,000	\$40,000	\$50,000
	Greater than or equal to 25 over the allowable standard	\$10,000	\$20,000	\$50,000	\$50,000]
N.J.A.C. 7:27-19.25(d)	Recordkeeping	\$500	\$1,000	\$2,500	\$7,500

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:

...

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Citation	Rule Summary	Fourth and Each			
		First Offense	Second Offense	Third Offense	Subsequent Offense
N.J.A.C. 7:27-22.3(q)	Certify Report	\$300	\$600	\$1,500	\$4,500
[N.J.A.C. 7:27-22.3(uu)	Compensate with DER credits for failure to perform timely testing or failure to install and/or operate control apparatus	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.]			
N.J.A.C. 7:27-22.5(b)	Submit Application for Operating Permit	\$2,000	\$4,000	\$10,000	\$30,000

...

23. - 29. (No change.)

[30. The violations of N.J.A.C. 7:27-30, Open Market Emissions Trading, and the civil administrative penalty amounts for each violation, are as set forth in the following table:

Citation	Rule Summary	First Offense	Second Offense	Third Offense	Subsequent Offense
N.J.A.C. 7:27-30.7(a)	Notice of Generation must be true, accurate and complete	See N.J.A.C. 7:27A-3.6 ¹			
N.J.A.C. 7:27-30.9(a)	Submit Notice of Transfer to registry	\$1,000	\$2,000	\$5,000	\$15,000
N.J.A.C. 7:27-30.9(a)	Notice of Transfer must be true, accurate and complete	See N.J.A.C. 7:27A-3.6 ¹			
N.J.A.C. 7:27-30.10(d)	Submit Notice of Verification to registry	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-30.10(d)	Notice of Verification must be true, accurate and complete	See N.J.A.C. 7:27A-3.6 ¹			
N.J.A.C. 7:27-30.12(c)-(e)	Use restrictions	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			
N.J.A.C. 7:27-30.12(g)	Use period cannot begin until Notice of Intent to Use submitted	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			

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Citation	Rule Summary	First Offense	Second Offense	Third Offense	Subsequent Offense
N.J.A.C. 7:27- 30.12(i)7	Hold all DER credits when Notice of Use submitted	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			
N.J.A.C. 7:27-30.12(k)	Replace invalid DER credits	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			
N.J.A.C. 7:27-30.12(l)	Rectify invalid verification	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			
N.J.A.C. 7:27-30.14(a)1	Use DER credits to compensate for alternative VOC control plan	See N.J.A.C. 7:27A-3.10(m)16 for civil administrative penalties for violations of N.J.A.C. 7:27-16.17(m)			
N.J.A.C. 7:27-30.14(a)2	Use DER credits to compensate for alternative NO _x maximum allowable emission rate	See N.J.A.C. 7:27A-3.10(m)19 for civil administrative penalties for violations of N.J.A.C. 7:27-19.13(i)			
N.J.A.C. 7:27-30.14(a)3	Use DER credits to compensate for innovative control technology plan	See N.J.A.C. 7:27A-3.10(m)19 for civil administrative penalties for violations of N.J.A.C. 7:27-19.23(e)10			
N.J.A.C. 7:27-30.14(a)4	Use DER credits to compensate for MEG alert	See N.J.A.C. 7:27A-3.10(m)19 for civil administrative penalties for violations of N.J.A.C. 7:27-19.24(c)			
N.J.A.C. 7:27-30.14(a)5	Use DER credits for failure to perform timely testing	See N.J.A.C. 7:27A-3.10(m)8 and 22 for civil administrative penalties for violations of N.J.A.C. 7:27-8.3(1) and 22.3(uu), respectively			
N.J.A.C. 7:27-30.14(a)6	Use DER credits for failure to install and/or operate control apparatus	See N.J.A.C. 7:27A-3.10(m)8 and 22 for civil administrative penalties for violations of N.J.A.C. 7:27-8.3(1) and 22.3(uu) respectively			
N.J.A.C. 7:27-30.14(d)	Comply with conditions when using DER credits for permit insurance	\$2,000 ¹	\$4,000 ¹	\$10,000 ¹	\$30,000 ¹
N.J.A.C. 7:27-30.14(f)	Comply with conditions when using DER credits for emission offsets	\$2,000 ¹	\$4,000 ¹	\$10,000 ¹	\$30,000 ¹
N.J.A.C. 7:27-30.14(g) & (h)	Prohibited uses	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			

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Citation	Rule Summary	First Offense	Second Offense	Third Offense	Subsequent Offense
N.J.A.C. 7:27-30.16(a)	Submit Notice of Use	\$2,000	\$4,000	\$10,000	\$30,000
N.J.A.C. 7:27-30.16(a)	Notice of Use must be true, accurate and complete	See N.J.A.C. 7:27A-3.6 ¹			
N.J.A.C. 7:27-30.21(b)	Use must comply with geographic constraints	A violation of this rule provision will be considered a violation of the emission limit for which DER credits were to be used for compliance and the user will be subject to corresponding penalties.			
N.J.A.C. 7:27-30.22(a)-(d)	Recordkeeping requirements	\$500	\$1,000	\$2,500	\$7,500

¹ The Department may reduce the base penalty by applying the following factors:

- | | |
|---|----------------------------------|
| (1) Administrative type violation not affecting quantity of DERs | 70% reduction from base penalty |
| (2) Violation affects quantity of DERs by 1 through 25% | 50% reduction from base penalty |
| (3) Violation affects quantity of DERs by 26% through 50% | 25% reduction from base penalty |
| (4) Violation affects quantity of DERs by greater than 50% | 0% reduction from base penalty |
| (5) Violation is reported to department and corrected by filing an amended Notice | 25% reduction from base penalty] |

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