CHAPTER 27

AIR POLLUTION CONTROL

Authority

N.J.S.A. 26:2C–1 et seq. and N.J.S.A. 26:2D–1 et seq.

Executive Order No. 66(1978) Expiration Date

Chapter 27, Air Pollution Control, is exempt from Executive Order No. 66(1978).

Chapter Historical Note

Chapter 27, Air Pollution Control, was filed and became effective prior to September 1, 1969.

Law Review and Journal Commentaries

Air Pollution Regulations and Trends. I. Leo Motiuk, Joan E. Pearson, 133 N.J.Law. 34 (Mag.) (March/April 1990).

Overturning Environmental Regulations: A Primer on Breaching The Regulatory Walls. John A. McKinney, Jr., J. Wylie Donald, 160 N.J.Law. 48 (Mag.) (April 1994).

Limitations on state agency authority to adopt environmental standards more stringent than federal standards: Policy considerations and interpretive problems. Jerome M. Organ, 54 Md.L.Rev. 1373 (1995). WESTLAW cite: 54 MDLR 1373.

CHAPTER TABLE OF CONTENTS

SUBCHAPTER 17. CONTROL AND PROHIBITION OF AIR POLLUTION BY TOXIC SUBSTANCES

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

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

SUBCHAPTER 20. USED OIL COMBUSTION

SUBCHAPTER 21. EMISSION STATEMENTS

SUBCHAPTER 22. OPERATING PERMITS

APPENDIX. THRESHOLDS FOR REPORTING EMISSIONS OF AIR CONTAMINANTS OTHER THAN HAZARDOUS AIR POLLUTANTS (HAPS)

SUBCHAPTER 23. PREVENTION OF AIR POLLUTION FROM ARCHITECTURAL COATINGS AND CONSUMER PRODUCTS

SUBCHAPTER 1. GENERAL PROVISIONS

7:27–1.1 Scope

Unless otherwise provided by rule or statute, the following shall constitute the rules of the Bureau of Air Pollution Control and shall govern the emitting of and such activities as result in the introducing of contaminants into the ambient atmosphere.

7:27–1.2 Construction

(a) These rules shall be construed so as to permit the Department, the Bureau of Air Pollution Control and its various agencies to discharge its statutory functions.

(b) The Commissioner and the Director of the Division of Environmental Quality may amend, expand or repeal these rules after public hearing. Such actions shall be filed with the Secretary of State as required by law.

7:27–1.3 Practice where rules do not govern

The Commissioner, the Director of the Division of Environmental Quality or any agency chief shall exercise his discretion in respect of any other matters not governed by these rules.

7:27–1.4 Definitions

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

"Air pollution" means the presence in the outdoor atmosphere of substances in quantities which are injurious to human, plant or animal life or to property or unreasonably interfere with the comfortable enjoyment of life and property throughout the State and in such territories of the State as shall be affected thereby and excludes all aspects of employer-employee relationship as to health and safety hazards.

"Assertedly confidential information" means information which is the subject of a confidentiality claim, for which a confidentiality determination has not been made.

"ASTM" means the American Society for Testing and Materials.

"British thermal unit" or "BTU" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Carbon monoxide" or "CO" means a gas comprised of molecules consisting of one carbon atom and one oxygen atom.

"CFR" means the Code of Federal Regulations.

"Claimant" means any person who submits a confidentiality claim under this subchapter.

"Class confidentiality determination" means a confidentiality determination made by the Department under N.J.A.C. 7:27–1.17, for a class of information.

"Commissioner" means the State Commissioner of Environmental Protection who is the chief administrative officer of the State Department of Environmental Protection.

ii. No more than three times the applicable hourly exclusion rate set forth in Table 16A, Column 3 is emitted in any 24–hour period.

3. The maximum allowable emission rate for source gases physically combined (manifolded) for more than one source operation shall be the sum of the maximum allowable emission rates for the separate source gases as determined under N.J.A.C. 7:27–16.6(c), (h), (i), and (j) and 16.16(c) and (e). The process emission rate shall be used as the maximum allowable emission rate of a separate source gas if it is less than the applicable exclusion rate contained in Table 16A, Column 3;

4. Until March 28, 1994, the provisions of 3 above may apply to source gases which are mathematically combined, providing approval for such a mathematical combination of sources has been obtained from the Department prior to March 28, 1992;

5. As of March 28, 1992, the Department shall not approve any mathematical combining of source gases; and

6. Any approval of a permit or certificate issued by the Department authorizing the demonstration of compliance through a mathematical combination of sources shall expire as of March 28, 1994. Any person who, as a result of this expiration, must alter any equipment or control apparatus in order to operate in conformance with any requirement of this subchapter shall do so in accordance with the following schedule:

i. By September 24, 1992, apply to the Department for a permit to carry out the alteration; and

ii. By March 28, 1994, comply with the requirements of this chapter and with any provisions or conditions set forth in any alteration permit issued which authorizes the alteration of the equipment or control apparatus.

(g) Any person responsible for a source operation subject to (c) above shall maintain the following records for each source operation:

1. For each different kind of batch or continuous process for which the source operation is used:

i. Record the following information determined in accordance with the Procedure for Using Table 16A in (c) above: the chemical name and vapor pressure of each VOC used, the percent concentration by volume of VOC in the source gas, the volumetric gas flow rate, the source gas range classification, and the maximum allowable emission rate; also record the maximum actual emission rate and maintain the calculations and any test data used to determine the actual emission rate for each process; and, if the source operation is used for more than one process, record the dates on which the source operation is used for each process; or

ii. Conduct an analysis of the source operation, which demonstrates that, under operating conditions that maximize the VOC emissions after any control, the VOC emission rate of the source operation is in compliance with this section; and maintain process records sufficient to demonstrate whether the VOC emission rate of the source operation from actual operations does not exceed the VOC emission rate under operating conditions;

2. For any source operation that has a thermal oxidizer used to control the emission of VOC, record on a continuous basis or at a frequency approved in writing by the Department the operating temperature at the exit of the combustion chamber and the carbon monoxide concentration in the flue gas emitted to the outdoor atmosphere; also maintain production records sufficient to demonstrate whether the processes conducted generate VOC emissions within the design parameters of the thermal oxidizer;

3. For any source operation that has a control apparatus using carbon or other adsorptive material used to control the emission of VOC:

i. Record on a continuous basis or at a frequency approved in writing by the Department the concentration of the total VOC in the flue gas emitted to the outdoor atmosphere; or

ii. Record the date and time the carbon or other adsorptive material used in the control apparatus is regenerated or replaced; also maintain production records sufficient to demonstrate whether the processes conducted generate VOC emissions within the design parameters of the control apparatus and any other information required to document whether the control apparatus is being used and maintained in accordance with the manufacturer's recommended procedures. The manufacturer's recommendations for use and maintenance are also to be readily available on the operating premises, and the person responsible for the source operation shall provide these to the Department upon request; and

4. Upon the request of the Department and at the frequency specified by the Department, record any other operating parameter relevant to the prevention or control of air contaminant emissions from the source operation or control apparatus.

Amended by R.1986 d.379, effective September 22, 1986 (operative October 18, 1986).
See: 17 N.J.R. 1969(a), 18 N.J.R. 1936(a).
Substantially amended.
Amended by R.1989 d.331, effective June 19, 1989 (operative July 24, 1989).
See: 20 N.J.R. 3052(a), 21 N.J.R. 1669(b).
Established separate provisions for prior to and as of June 15, 1990 and added Column 4 to table 4.
Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992); (m)1. (operative October 1, 1992); (m)2–4 (operative April 1, 1993).
See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).
Addressed EPA-identified deficiencies; eliminated "bubble" provisions.

Administrative correction to (a); (m)1, i and 3.
See: 24 N.J.R. 1889(a).
Recodified from 7:27–16.6 and amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

7:27–16.17 Facility-specific VOC control requirements

(a) This section establishes procedures and standards for the establishment of VOC control requirements for any source operation that:

1. Is located at a major VOC facility and has the potential to emit at least three pounds per hour (potential batch cycle emission rate of three pounds per hour for batch processes), and:

i. Is not regulated elsewhere in this subchapter; and

ii. Is not specifically exempted elsewhere in this subchapter because the source operation is within a category that is exempted or because the source operation operates below exclusion rates or threshold levels for control; or

2. If the owner or operator of a source operation regulated under N.J.A.C. 7:27–16.2 through 16.16 or 16.18 through 16.21 seeks approval of an alternative VOC control plan, which would apply to the equipment or source operation notwithstanding any control requirement or emission limit which would otherwise apply under this subchapter.

(b) Except as provided at (t) below, the owner or operator of any facility that contains a source operation subject to (a)1 above shall:

1. By October 24, 1994, submit a demonstration for all source operations to the Department at the address listed in (s) below. This demonstration shall include one of the following for each source operation subject to (a)1 above:

i. Information, pursuant to (e) below, that demonstrates the source operation is currently served by a control apparatus that collects at least 90 percent by weight of the VOC emissions from the source operation and prevents from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, that the owner or operator has implemented pollution prevention measures (or a combination of control apparatus and pollution prevention measures) that achieve at least the same level of VOC emission reductions;

ii. Information, pursuant to (e) below, that demonstrates by May 31, 1995 the source operation will be served by control apparatus that collects at least 90 percent by weight of the VOC emissions from the source operation and prevents from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, that the owner or operator will implement pollution prevention measures (or a combination of control apparatus and pollution prevention measures) that achieve at least the same level of VOC emission reductions; or

iii. A proposed alternative VOC control plan prepared in accordance with (d) below.

2. Beginning on May 31, 1995, comply with either (b)2i or ii below:

i. Use control apparatus that the Department has determined (pursuant to (1) below) will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected; or

ii. Operate the facility in accordance with an alternative VOC control plan approved by the Department pursuant to (j) below.

(c) An owner or operator seeking approval of an alternative VOC control plan pursuant to (a)2 above shall submit to the Department at the address listed in (s) below a proposed alternative VOC control plan prepared in accordance with (d) below. Submission of a proposed alternative VOC control plan does not relieve an owner or operator of any facility, equipment or source operation facility from complying by May 31, 1995 for source operations first regulated under this subchapter as amended operative July 26, 1994 or compliance dates in other sections of this subchapter. If and when the Department approves the alternative VOC control plan, the owner or operator shall be subject to the conditions and requirements of the plan and of the Department's approval.

(d) An owner or operator submitting a proposed alternative VOC control plan pursuant to (b)1iii or (c) above shall include the following information in the plan:

1. A list of each source operation at the facility to be included in the plan:

i. For a submission pursuant to (b)1iii above, the list shall include each source operation that is not regulated under N.J.A.C. 7:27–16.2 through 16.16, 16.20 or 16.21, and has the potential to emit at least three pounds of VOC per hour; or

ii. For a submission pursuant to (c) above, the list shall include each source operation for which the owner or operator seeks an alternative to compliance under N.J.A.C. 7:27–16.2 through 16.16, 16.20 or 16.21;

2. The following information for each source operation listed pursuant to (d)1 above:

i. A brief description of the source operation, and its permit number and any other identifying numbers;

ii. The maximum rated capacity of the source operation;

iii. The source operation's potential to emit VOC;

iv. A list of all VOC control technologies available for use with the source operation;

v. A list of all alternative processes and pollution prevention measures that the owner or operator is considering using with or in place of the source operation to reduce VOC emissions;

vi. An analysis of the technological feasibility of installing and operating each control technology and process alternative identified in (d)2iv and v above;

vii. For each control technology and process alternative which is technologically feasible to install and operate, an estimate of the cost of installation and annual operation;

viii. An estimate of the remaining useful life of the existing source operation;

ix. An estimate of the reduction in VOC emissions attainable through the use of each control technology and process alternative identified in (d)2iv and v above;

x. The VOC control technology or technologies or process alternatives which the owner or operator proposes to employ;

xi. For any construction, alteration or installation of any equipment or control apparatus that the owner or operator proposes in the plan, a complete application for each permit required. The permit may be a preconstruction permit and certificate under N.J.A.C. 7:27–8, an operating permit under N.J.A.C. 7:27–22, or a facility-wide permit as defined at N.J.A.C. 7:1K–1.5;

xii. A proposed VOC emission limit for the source operation or for the proposed process alternative; and

xiii. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan;

3. Any other information the Department requests that is reasonably necessary to enable it to determine whether the application satisfies the requirements of (j) below; and

4. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27–1.39.

(e) An owner or operator submitting a demonstration pursuant to (b)1i or ii above shall include the following information in the demonstration:

1. A list of each source operation at the facility within the scope of (a)1 above;

2. The following information for each source operation listed pursuant to (e)1 above:

i. A brief description of the source operation, and its permit number and any other identifying numbers;

ii. The maximum rated capacity of the source operation;

iii. The source operation's potential to emit VOC;

iv. A description of the control apparatus that serves the source operation (for demonstrations pursuant to (b)1i above) or that the owner or operator states will serve the source operation (for demonstrations pursuant to (b)1ii above);

v. An analysis of how the control apparatus will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected;

vi. A description of any pollution prevention measures that the owner or operator has implemented (for demonstrations pursuant to (b)1i above) or will implement (for demonstrations pursuant to (b)1ii above), and analysis of how such measures will control VOC emissions to the extent required under (b)1i and ii above;

vii. A proposed VOC emission limit for the source operation or for the proposed process alternative; and

viii. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan;

3. A complete application for each new permit required and for each change to an existing permit for any equipment or control apparatus to be constructed, altered or installed in connection with the demonstration;

4. Any other information which the Department may request which is reasonably necessary to enable it to determine whether the application satisfies the requirements of (1) below; and

5. A certification signed by the owner or operator, satisfying the requirements of N.J.A.C. 7:27–1.39.

(f) Notwithstanding the provisions of (b) above, the owner or operator of a facility that had actual annual emissions of VOC in 1990 and each year thereafter of less than 25 tons, may comply with the requirements of this section by obtaining the Department's approval of a compliance plan and implementing such a plan. To comply in this manner, the owner or operator shall submit a proposed compliance plan pursuant to (f)1 below, obtain the Department's approval of the plan pursuant to (k) below, and implement the plan pursuant to (f)2 below.

1. The owner or operator shall submit to the Department a proposed compliance plan that includes the following information, and is certified by the owner or operator pursuant to N.J.A.C. 7:27–1.39;

i. Documentation establishing that the actual annual emissions of VOC from the facility in 1990 and each year thereafter were less than 25 tons. If the facility did not commence operations until after 1990, the documentation shall address each year beginning with the year that operations commenced. The documentation shall include records maintained at the facility and

any report of actual emissions, including any emission statement, submitted for the facility to the Department for the relevant years;

ii. A statement of the owner or operator's intent to reduce the facility's potential to emit VOC to less than 25 tons per year;

iii. A description of how the reduction of the facility's potential to emit is to be achieved;

iv. Complete applications for amendments to any existing permit or for any new permit required to achieve the reduction of the facility's potential to emit VOC to less than 25 tons per year; and

v. Proposed recordkeeping requirements sufficient to document the owner or operator's continued compliance with the plan.

2. By May 31, 1995, the owner or operator of the facility shall reduce the facility's potential to emit VOC to less than 25 tons per year and achieve compliance with all new or amended permits.

(g) Within 30 days after receiving a demonstration submitted pursuant to (b)1 above, a proposed alternative VOC control plan submitted pursuant to (b)2 above, or a proposed compliance plan submitted pursuant to (f) above, the Department shall notify the owner or operator in writing whether the submission includes sufficient information to commence review. If the submission does not contain sufficient information to complete the review, the Department shall include in the notice a list of the deficiencies, a statement of the additional information required to make the submission complete, and a time by which the owner or operator must make a complete submission. The Department may refrain from reviewing the substance of the submission until the additional information is provided to the Department.

(h) Failure by an owner or operator to submit the additional information requested by the Department pursuant to (g) above within the time stated in the Department's notification shall constitute a violation of this subchapter. In such case, the Department may deny the request for approval of the submission and pursue its other remedies.

(i) The Department shall seek comments from the general public before making any final decision to approve or disapprove a proposed alternative VOC control plan. The Department shall publish a Notice of Opportunity for Public Comment in a newspaper for general circulation in the area in which the major VOC facility is located. In addition, the Department shall submit any approved alternative VOC control plan to EPA for approval as a revision to New Jersey's State Implementation Plan.

(j) Within six months after receiving a complete proposed alternative VOC control plan, the Department shall approve, approve and modify, or disapprove the proposed plan and notify the owner or operator of the decision in writing. The Department shall approve the proposed plan or request only if it satisfies the following requirements:

1. The proposed plan or request contains all of the information required under (d) above;

2. The proposed plan considers all control technologies available for the control of VOC emissions from the type of equipment or source operation in question;

3. For any control technologies described in (j)2 above which the owner or operator does not propose to use on the equipment or source operation, the proposed plan demonstrates that the control technology:

i. Would be less effective in controlling VOC emissions from the equipment or source operation than the proposed measures;

ii. Is unsuitable for use with the source operation, or duplicative of control technology or pollution prevention measure which the plan proposes to use;

iii. Would carry costs disproportionate to the improvement in the reduction of the VOC emissions rate which the control technology is likely to achieve, or disproportionately large in comparison to the total reduction in VOC emissions which the control technology is likely to achieve over its useful life; or

iv. Would carry costs disproportionate to the costs incurred for the control of VOC emissions from the same type of source operations used by all other persons in the owner or operator's industry;

4. The emission limit proposed for each source operation is the lowest rate which can practicably be achieved at a cost within the limits described in (j)3iii and iv above;

5. The cost of achieving an additional emission reduction beyond each proposed limit would be disproportionate to the size and environmental impact of that additional emission reduction; and

6. For any pollution prevention or other emission reduction measures proposed by the owner or operator, the proposed plan demonstrates that the measures:

i. Result in actual reductions in VOC emissions;

ii. Result in VOC emission reductions which are quantifiable; and

iii. Result in VOC emission reductions which are Federally enforceable.

(k) Within six months after receiving a complete compliance plan submitted pursuant to (f) above, the Department shall approve, approve and modify, or disapprove the proposed compliance plan and notify the owner or operator of the decision in writing. The Department shall approve the proposed compliance plan only if it satisfies the following conditions:

1. The compliance plan contains all of the information required under (f) above;

2. The compliance plan demonstrates to the Department's satisfaction that actual emissions of VOC, including fugitive VOC emissions, in 1990 (or the first year of the facility's operations, if operations commenced after 1990) and each year thereafter are less than 25 tons;

3. The proposed recordkeeping requirements are sufficient to enable the Department to verify that the owner or operator is complying with the plan; and

4. The compliance plan demonstrates that the potential to emit VOC will be less than 25 tons if the plan is approved and implemented.

(*l*) Within six months after receiving a complete demonstration submitted pursuant to (b)1 above, the Department shall approve, approve and modify, or disapprove the demonstration and notify the owner or operator of the decision in writing. The Department shall approve the demonstration only if:

1. The demonstration includes all of the information required under (e) above;

2. To the extent that the demonstration depends upon any construction, alteration or installation and use of any equipment or control apparatus that is not in use as of the time the demonstration was submitted, the owner or operator has obtained any new preconstruction permit and certificate, operating permit, or facility-wide permit, or any change thereto required for the control apparatus, and has agreed to install and use all such control apparatus in accordance with the applicable permit and certificate;

3. To the extent that the demonstration depends upon the implementation of pollution prevention measures that have not been implemented before the time at which the demonstration was submitted, the owner or operator has agreed to implement such measures; and

4. The demonstration establishes to the satisfaction of the Department that the control apparatus will collect at least 90 percent by weight of the VOC emissions from the source operation and prevent from being discharged into the outdoor atmosphere at least 90 percent by weight of the VOC collected, or that the pollution prevention measures will achieve at least the same level of emission reductions.

(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 reductions (DERs) 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) Before altering any source operation which is included in an approved alternative VOC control plan, approved compliance plan or demonstration (except as authorized or required in the approval), the owner or operator shall:

1. Pursuant to this section, apply for and obtain the Department's approval of an amendment to the approved compliance plan, VOC control plan, or demonstration, reflecting the proposed alteration. If the owner or operator does not obtain the Department's approval of the amendment before commencing operation of the altered equipment or source operation, the Department may (in addition to assessing penalties under N.J.A.C. 7:27A–3.10) modify the VOC control plan, compliance plan or demonstration to reflect the alteration, in a manner satisfying the criteria set forth in (j), (k) or (*l*) above, respectively; and

2. Apply for and obtain any preconstruction permit and certificate, operating permit, or facility-wide permit, or change thereto, required for the alteration. Each application must be submitted with the application to amend the VOC control plan.

(*o*) The Department will revoke an approval of an alternative VOC control plan by written notice to the holder of the approval if EPA denies approval of the proposed VOC plan as a revision to the State Implementation Plan. The Department may revoke an approval of an alternative VOC control plan, compliance plan or demonstration by written notice to the holder of the approval, if:

1. Any material condition of the approval is violated;

2. The Department determines that its decision to grant the approval was materially affected by a misstatement or omission of fact in the owner or operator's submission or any supporting documentation; or

3. The Department determines that continued use of the subject source operation pursuant to the approval poses a potential threat to the public health, welfare or the environment.

4. For an alternative VOC control plan, EPA denies approval of the plan as a revision to the State Implementation Plan.

(p) A person may request an adjudicatory hearing in accordance with the procedure at N.J.A.C. 7:27–1.32, if:

1. The Department has denied the person's application for approval under this section for any other reason than an EPA rejection of the SIP revision;

2. The person seeks to contest one or more conditions of the Department's approval imposed under (m) above; or

3. The Department has revoked the person's approval pursuant to (*o*)1 through 3 above.

(q) After receipt of a written request from an owner or operator, the Department may authorize a 60 day extension of the deadline set forth in (b)1 above, provided that such a request shall include a statement, certified in accordance with N.J.A.C. 7:27–1.39, that notwithstanding the request for extension, the facility will comply with all applicable emission limits set forth in this section by the May 31, 1995 deadline established in (b)2 above. Such extension may be renewed by the Department upon the written request of the owner or operator provided that the request for renewal shall also include a statement, certified in accordance with N.J.A.C. 7:27–1.39, that notwithstanding the request for an extension, that the facility will comply with all applicable emission limits set forth in this section by the May 31, 1995 deadline established in (b)2 above. Written requests for the extension of a deadline submitted shall be submitted to the address listed below:

Assistant Director, Air and Environmental
Quality Enforcement
Division of Enforcement Field Operations
Department of Environmental Protection
PO Box 422
401 East State Street, 4th floor
Trenton, New Jersey 08625–0422

(r) Notwithstanding the requirement at (b)2 above, demonstration that a source operation is currently served by control apparatus that meets the criteria set forth in (b)1i above does not relieve a facility from complying with all existing emission limits and conditions set forth in this chapter.

(s) The owner or operator submitting a proposed alternative VOC control plan, compliance plan or demonstration shall send it to the Department at the following address:

Chief, Bureau of New Source Review
Division of Environmental Regulation
Department of Environmental Protection
PO Box 027
Trenton, New Jersey 08625–0027

(t) If a source operation is covered by a preconstruction permit and operating certificate or an operating permit, either of which requires the source operation to utilize a control apparatus which attains at least 90 percent capture and 90 percent control, the owner or operator need only be in compliance with that permit or certificate to be deemed in compliance with this section; the owner or operator need not submit the demonstration required by (b) above.

New Rule, R.1993 d.666, effective December 20, 1993 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 25 N.J.R. 4551(a), 25 N.J.R. 6002(a).
Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).
See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).
Public Notice: Submittal date for categories exempted from compliance until November 15, 1994.
See: 26 N.J.R. 4217(a).
Administrative Correction.
See: 26 N.J.R. 4793(a).
Amended by R.1995 d.255, effective May 15, 1995 (operative June 19, 1995).
See: 26 N.J.R. 4478(a), 27 N.J.R. 1979(b).
Administrative Correction.
See: 27 N.J.R. 2740(a).
Amended by R.1996 d.303, effective July 1, 1996 (operative August 2, 1996).
See: 28 N.J.R. 1147(b), 28 N.J.R. 3414(a).
In (m) provided for approval of alternative VOC control plans.
Amended by R.1998 d.231, effective May 4, 1998 (operative June 12, 1998).
See: 29 N.J.R. 3521(a), 30 N.J.R. 1563(b).
In (d)2, rewrote xi; in (e), substituted "new permit required and for each change to an existing permit" for "permit required under N.J.A.C. 7:27–8" in 3; in (*l*), rewrote 2; in (n), rewrote 2; and in (p), changed N.J.A.C. reference in the introductory paragraph.
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
In (m), substituted "application for an alternative VOC control plan submitted to the Department pursuant to" for "alternative VOC control plan issued, extended or renewed under" following "of any" in the second sentence.

Law Review and Journal Commentaries

Business-Friendly Regulators Ease Air Pollution Rules. Neale R. Bedrock. 139 N.J.L.J. No.8, S10 (1995).

7:27–16.18 Leak detection and repair

(a) The provisions of this section shall apply to any owner or operator of the following:

1. Any petroleum refinery;

2. Any natural gas/gasoline processing plant;

3. Any synthetic organic chemical or polymer manufacturing facility; or

4. Any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, which is a major VOC facility.

(b) The provisions of this section shall apply only to equipment in contact with a substance that:

1. At any petroleum refinery, is 10 percent by weight or greater applicable VOC;

2. At any natural gas/gasoline processing plant, is one percent by weight or greater applicable VOC; or

3. At any synthetic organic chemical or polymer manufacturing facility, is ten percent by weight or greater gaseous applicable VOC or light liquid VOC and the equipment is used to produce greater than 1,100 tons per year (1,000 megagrams per year) of synthetic organic chemicals or polymers, or any combination thereof; or

4. At any chemical plant, other than a synthetic organic chemical or polymer manufacturing facility, is 10 percent by weight or greater applicable VOC, and the total quantity of applicable VOC processed in the equipment is greater than 550 tons per year. The total quantity processed shall include the total annual quantity of applicable VOC charged to all operations for which the equipment is used and does not include any in-process recycled and in-process refluxed applicable VOC and any applicable VOC which is generated during the process.

7:27–18.10 Exemptions

(a) If a person demonstrates that a proposed significant net emission increase of an air contaminant which results from the use of alternative fuels in existing fuel burning equipment will not cause an exceedance of the significance level for the respective criteria pollutant in a nonattainment area for that pollutant, and will not prevent reasonable further progress toward attaining any NAAQS, the Department may, in its discretion, exempt the person from compliance with the provisions of this subchapter. No exemption shall be granted unless the person demonstrates, at a minimum, that:

1. The equipment was capable of burning the alternative fuel before December 21, 1976; or

2. The equipment must use such fuel by reason of an order in effect under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (15 U.S.C. 792 et seq.) or under any superseding legislation, or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act of 1978 (16 U.S.C. 791a et seq.); or

3. The alternative fuel is derived from municipal solid waste; or

4. The alternative fuel is to be used by reason of an order or rule issued under Section 125 of the Clean Air Act.

(b) N.J.A.C. 7:27–18.3(c)1 does not apply to any person submitting an application for:

1. Portable facilities which will be relocated outside of a nonattainment area within six months of initiation of operation; or

2. Temporary source operations which produce an experimental product, and which cease operation within six months of initiation of operation.

(c) The exemption in (b) above may not be applied to the same portable facility or temporary source operation more than once within the lifetime of the portable facility or temporary source operation.

Recodified from 18.9 and amended by R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
Changes made pursuant to 1990 Clean Air Act amendments.
Amended by R.1996 d.511, effective November 4, 1996 (operative November 23, 1996).
See: 28 N.J.R. 748(a), 28 N.J.R. 4784(b).

7:27–18.11 Interface with other trading programs

(a) The Open Market Emissions Trading Program at N.J.A.C. 7:27–30 establishes the rules for the generation, trading, use, and voluntary retirement of DER credits. Emission reductions banked pursuant to N.J.A.C. 7:27–18.8 may be converted to DER credits under the following conditions:

1. The person converting the emission reductions is their holder of record in the New Jersey emission offset bank;

2. The change which caused the emission reductions to commence was first implemented after August 2, 1996;

3. The person who applied for the banking of the emission reductions under N.J.A.C. 7:27–18.8 would be eligible under N.J.A.C. 7:27–30.4(a) to be the generator of DER credits based on those emission reductions;

4. The emission reductions are eligible under N.J.A.C. 7:27–30 to be the basis for a DER credit. (Emission reductions that result from a shutdown or curtailment, for example, may not be used as the basis of a DER credit);

5. The last day of the generation period is no earlier than 90 days before the date of submission of the Notice of Generation (the provisions for late submittal at N.J.A.C. 7:27–30.7(b) shall not apply; for example, to convert emission reductions realized during a generation period that ends on January 1, 1999, a complete Notice of Generation must be submitted by April 1, 1999);

6. The holder of the emission reductions submits to the Department's emission offset bank and the registry a Notice of Generation which meets the requirements of N.J.A.C. 7:27–30.7; and

7. The number of DER credits generated is calculated in accordance with N.J.A.C. 7:27–30.5 and the following:

i. In determining the lowest allowable emission rate which applies in accordance with N.J.A.C. 7:27–30.7(d)1i, a limit established in a permit shall not be taken into account, unless it is required by an underlying Federal or State rule, including (if applicable) the requirement at N.J.A.C. 7:27–8.12 to document state of the art or the requirement at N.J.A.C. 7:27–22.35 to incorporate advances in the art of air pollution control; and

ii. The historic baseline rate used in the calculation shall be determined in accordance with N.J.A.C. 7:27–30.7(d)3; except that the five years prior to the banking of the reductions as emission offsets (rather than the five years prior to the generation period) may be used as the basis for deriving the historic baseline rate if:

(1) The emission reductions were banked for future application as emission offsets pursuant to N.J.A.C. 7:27–18.8 prior to (the date which is the operative date of these amendments); and

(2) The Notice of Generation for the first generation period is submitted no later than (the date which is one year plus 90 days after the operative date of these amendments).

(b) The provisions at N.J.A.C. 7:27–18.8(e), which require that the amount of emission reductions be reduced to

reflect any new emission limits applicable to the generator source that are established under a State or Federal statute, rule, or regulation, shall be applied to emission reductions which were banked pursuant to N.J.A.C. 7:27–18.8 and which are being converted to DER credits.

New Rule, R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).
New Rule, R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).

7:27–18.12 Civil or criminal penalties for failure to comply

The owner or operator of any facility subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the owner or operator to civil penalties in accordance with N.J.A.C. 7:27A–3 and applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C–19(f)1 and 2. If there is more than one owner or operator of a facility, all owners and operators are jointly and severally liable for such civil penalties.

New Rule, R.1993 d.129, effective March 15, 1993 (operative April 20, 1993).
See: 24 N.J.R. 3459(a), 25 N.J.R. 1231(b).

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

Authority

N.J.S.A. 13:1B–3, 13:1D–9, and 26:2C–1 et seq., in particular 26:2C–9(c) and 19.

Source and Effective Date

R.1993 d.682, effective December 20, 1993 (operative January 23, 1994).
See: 25 N.J.R. 631(a), 25 N.J.R. 5957(a).

Law Review and Journal Commentaries

Air Pollution Law Changes Target Nitrogen Oxides. Neale R. Bedrock, 136 N.J.L.J. No. 8, S17 (1994).

Explaining the Facts of BACT, RACT and GACT. Neale R. Bedrock, 138 N.J.L.J. No. 8, 54 (1994).

7:27–19.1 Definitions

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

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors or gases.

"Ambient air quality standard" means a limit on the concentration of an air contaminant in the general outdoor atmosphere as set forth in N.J.A.C. 7:27–13 or 40 CFR 50.

"Alter" means to effect an alteration of equipment or control apparatus.

"Alteration" means one of the following changes to equipment or control apparatus, or to a source operation, for which a permit has been issued:

1. If the equipment, control apparatus, or source operation is subject to preconstruction permit requirements, a change which requires a permit revision under N.J.A.C. 7:27–8.18; or

2. If the equipment, control apparatus, or source operation is at a facility for which an operating permit has been issued, a change which requires a minor modification or a significant modification of the permit under N.J.A.C. 7:27–22.23 or 24.

"Alternative maximum allowable emission rate" means a maximum allowable emission rate, set by the Department on a site-specific basis pursuant to N.J.A.C. 7:27–19.13.

"Anthracite coal" means coal that is classified as anthracite according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388–77, incorporated herein by reference. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Asphalt" means a solid, semisolid, or liquid material, produced by mixing bituminous substances together with gravel, crushed rock or similar materials, and used commonly as a coating or paving.

"ASTM" means the American Society for Testing and Materials.

"Averaging" means complying with the requirements of this subchapter pursuant to N.J.A.C. 7:27–19.6, Emissions averaging.

"Averaging unit" means an individual source operation or item of equipment which is included in a designated set for the purpose of averaging pursuant to N.J.A.C. 7:27–19.6.

"Base year" means calendar year 1990 or other calendar year determined pursuant to N.J.A.C. 7:27–19.20(d)1, in connection with a plan for seasonal fuel switching.

"Batch type asphalt plant" means an asphalt plant where the aggregate and asphalt cement or other binder are mixed in equipment other than a rotary dryer.

"Bituminous coal" means coal that is classified as bituminous according to the ASTM Standard Specification for Classification of Coals by Rank, ASTM D 388–77. This specification can be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103.

"Borosilicate recipe" means a formula for making glass using 60 to 80 percent silicon dioxide, five to 35 percent boric oxides, and four to 23 percent other oxides.

"British thermal unit (BTU)" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Calendar day" means the 24 hour period from 12:00 o'clock midnight to 12:00 o'clock midnight the following day.

"Carbon monoxide (CO)" means a colorless, odorless, tasteless gas at standard conditions, having a molecular composition of one carbon atom and one oxygen atom.

"Certificate" means either an operating certificate or a temporary operating certificate.

"Cleaner fuel" means a fuel other than a combustion source's primary fuel, the combustion of which results in a rate of NO_x emissions that is less than the rate of NO_x emissions when the primary fuel is combusted, all other circumstances being equal.

"Continuous emissions monitor" or "CEM" means a device which continuously measures the emissions from one or more source operations.

"Continuous monitoring system" or "CMS" means a system designed to continuously measure various parameters at a facility which may affect or relate to a facility's emissions. Components of a CMS include, but are not limited to, any continuous emissions monitor (CEM), continuous opacity monitor (COM), continuous process monitor (CPM), or any other constantly operating measuring device and recording device approved by the Department to perform one or more of the functions of a CMS.

"CFR" means the Code of Federal Regulations.

"Coal" means anthracite coal, bituminous coal, coke, lignite, nonbanded coal, and/or subbituminous coal.

"Coke" means a fused, cellular, porous substance that remains after free moisture and the major portion of the volatile materials have been distilled from bituminous coal and other carbonaceous material by heating it in the absence of air or with a limited supply of air.

"Combined cycle gas turbine" means a gas turbine in which heat is recovered from the turbine's exhaust gases to heat water or generate steam.

"Combustion source" means a source operation or item of equipment which combusts fuel.

"Commercial container glass" means clear or colored glass made of soda-lime recipe, which is formed into bottles, jars, ampoules or other containers, but does not include specialty container glass.

"Commercial fuel" means solid, liquid, or gaseous fuel which is ordinarily produced, manufactured, or sold for the purpose of creating heat.

(d) Any owner or operator of a MSW incinerator that submits to the Department a report of compliance testing, including all test runs, for a MSW incinerator shall have such report reviewed prior to submission and certified by a licensed professional engineer or an industrial hygienist certified by the American Board of Industrial Hygiene.

(e) Any owner or operator of a MSW incinerator shall maintain at the facility a complete record, including all test reports, of all compliance testing, including all test runs, conducted at the facility on equipment subject to this subchapter. The Department may specify in writing that such reports be maintained in a specific format.

(f) Any owner or operator of a MSW incinerator who submits to the Department a report of compliance testing, including all test runs, shall certify that report in accordance with N.J.A.C. 7:27–8.24.

(g) The owner or operator shall make any record made pursuant to (e) above available to the Department, or its authorized representatives, for inspection for a period of five years after the date the record is made.

7:27–27.10 Penalties

Failure to comply with any provision of this subchapter shall subject the owner or operator to civil penalties in accordance with N.J.A.C. 7:27A–3 and applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 2C–28.3 and N.J.S.A. 26:2C–19(f)1 and 2.

SUBCHAPTERS 28 THROUGH 29. (RESERVED)

SUBCHAPTER 30. OPEN MARKET EMISSIONS TRADING

Authority

N.J.S.A. 26:2C, especially 26:2C–8 and 26:2C–9.8.

Source and Effective Date

R.1996 d.303, effective July 1, 1996 (operative August 2, 1996).
See: 28 N.J.R. 1147(b), 28 N.J.R. 3414(a).

7:27–30.1 Purpose and scope

(a) This subchapter establishes procedures and standards for the Open Market Emissions Trading Program.

(b) This subchapter includes procedures and standards for the generation, banking, transfer, voluntary retirement, invalidation, and cancelation of discrete emission reduction credits (DER credits) that are based on reduction of emissions of volatile organic compounds (VOC) and oxides of nitrogen (NO_x). It also includes procedures and standards for compliance with certain VOC and NO_x air pollution control requirements through the use of DER credits.

(c) This subchapter also includes procedures and standards for the generation, banking, transfer, voluntary retirement, invalidation, and cancelation of discrete emission reduction credits (DER credits) that are based on reduction of emissions of greenhouse gases (GHG).

(d) Nothing in this subchapter affects the applicability of the requirements of any other law, regulation, order or permit. For example, if N.J.A.C. 7:27–8 or 22 would require that a permit be revised or modified to reflect a physical or operational change that results in an emission increase, that permit revision or modification would still be required regardless of whether the change arose from the generation or use of DER credits.

Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Rewrote the section.

7:27–30.2 Definitions

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

"Activity" or "activity level" means, in reference to an emissions source, the duration or degree of its operation during a selected period of time, expressed in units that correspond to the units used in the denominator of an emission rate which applies to the source. For example:

1. If the emission rate is expressed as emissions per hour of operation, the source's activity would be expressed as the number of hours of operation in the selected period of time; or

2. If the emission rate is expressed as emissions per BTU of fuel consumed, the source's activity would be expressed as the number of BTUs of fuel consumed during the selected period of time.

"Air contaminant" means any substance, other than water or distillates of air, present in the atmosphere as solid particles, liquid particles, vapors, or gases.

"Allowable emission rate" means the most stringent of any air quality emission limit or standard in any State or Federal law or rule which is applicable to a particular emissions source.

"Alternative emission limit" means an emission limit that the Department has established for a specific emissions source, which is less stringent than the limit in a State or Federal rule that would otherwise apply to the source.

"AP–42" means the manual, published by the EPA, entitled "Compilation of Air Pollutant Emission Factors," which

is incorporated herein by reference, as amended and supplemented. This document may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, (703) 487–4650; or from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, (202) 783–3228. In addition, this document can be downloaded electronically from the EPA's Technology Transfer Network Bulletin Board Service by dialing (919) 541–5742; or from the EPA website at http://epa.gov/tnn/chief/ap42etc.html.

"Area source" means a class of stationary sources or nonroad sources, where each source in the class is too small and/or too numerous to be individually listed in an emissions inventory submitted by the State to the EPA or in a facility's emission statement submitted pursuant to N.J.A.C. 7:27–21. An example of an area source is consumer and commercial products.

"Batch" means, with respect to DER credits, the set of DER credits included in a single Notice of Generation submitted to the registry. Such a set shall include all credits resulting from the implementation of a specific generation strategy during a single generation period.

"Best available control technology (BACT)" is as defined in 40 CFR § 51.166(b)(12).

"BTU" means British thermal unit.

"Calendar quarter" means January 1 through March 31; April 1 through June 30; July 1 through September 30; or October 1 through December 31.

"Carbon equivalent" means the weight of a quantity of a greenhouse gas multiplied by its global warming potential and then also multiplied by the ratio of the molecular weight of carbon to that of carbon dioxide.

"Ceiling rate" means the user source's maximum allowable emission rate during the use period, when DER credits are being used for permit insurance. Such a rate will typically be higher than the corresponding limit in the source's permit. A ceiling rate is selected and specified by the user and is set forth in the Notice of Intent to Use.

"Complete" means, with respect to a notice, containing all information, supporting documentation, statements, and certification required for such a notice under this subchapter.

"Creditable emission reduction" shall have the meaning defined for this term at N.J.A.C. 7:27–18.1.

"Curtailment" means a temporary or partial reduction in an emissions source's economic output. For the purposes of this subchapter, this term does not include either of the following reductions:

1. A reduction in mobile source activity levels that results from an activity reduction plan approved by the EPA or by a State agency (such as an employee commute option plan approved by the State Department of Transportation under N.J.A.C. 16:50); or

2. A reduction in the production of electricity that results from implementing electrical energy efficiency measures.

"Day" means calendar day, unless the phrase business day or working day is used.

"Department" means the New Jersey Department of Environmental Protection (or its authorized agent).

"DER credit" or "credit" means a tradable entity, based on discrete emission reductions which meet the applicable requirements in this subchapter at N.J.A.C. 7:27–30.4(e) or (f) and at N.J.A.C. 7:27–30.6. The value of such a credit shall be given in units of weight, such as pounds or tons. There are three types of DER credits: VOC credits, NO_x credits, and GHG credits.

"Design margin" means the difference between the allowable emission limit for an emissions source, and the actual level of emissions that the source would be designed to achieve, such that expected variations in the source's emissions would not cause it to exceed the allowable emission limit.

"Discrete emission reduction" means a quantity of emission reductions, given in units of weight such as pounds or tons, that were realized over a finite period of time and have been quantified in accordance with this subchapter.

"Economic output" means the goods and/or services which are produced by an emissions source during a specified period of time. Examples include quantity of products and product intermediates manufactured; the flux of useable energy, measured at the point of use, in units such as lumens of light, ton hours of cooling, British thermal units of thermal energy, or kilowatt hours of electricity; the number of square feet interior area illuminated, heated, or cooled to a given standard; or the number of miles a given number of individuals or a given weight or volume of materials are transported.

"Emissions source" means any mobile source, nonroad source, or stationary source.

"EPA" means the United States Environmental Protection Agency, or its authorized agent.

"Equipment" means any device capable of causing the emission of an air contaminant either directly or indirectly into the outdoor atmosphere, and any stack, chimney, conduit, flue, duct, vent, or similar device connected or attached to, or serving, the equipment. This term includes, but is not limited to, any equipment in which the preponderance of the air contaminants emitted is caused by a manufacturing process.

"Facility" means the combination of all structures, buildings, equipment, storage tanks, source operations, and other operations located on one or more contiguous or adjacent properties, which are under common control of the same person or persons.

"Federal Clean Air Act" means 42 U.S.C. § 7401 et seq., as amended or supplemented.

"Fleet" means 10 or more vehicles under common ownership.

"Fugitive emissions" means any emissions of an air contaminant released directly or indirectly into the outdoor atmosphere which do not pass through any stack or chimney.

"Generation period" means that period of time during which a batch of DER credits is generated.

"Generator" means a person who generates one or more DER credits pursuant to this subchapter.

"Generator source" means any emissions source that generates emission reductions that are used as a basis for generation of DER credits.

"GHG credit" means a DER credit based on reductions of a greenhouse gas. One GHG credit has an assigned value of one metric ton (2,205 pounds) of carbon equivalent.

"Global warming potential" or "GWP" is the ratio of the global heat-trapping effect, both direct and indirect, of one mass unit of a gas to that of the same mass unit of carbon dioxide over a given period of time. The 100–year period recommended by the Intergovernmental Panel on Climate Change (IPCC) shall be used for the purposes of this subchapter. A list of the GWPs of greenhouse gases is provided in Appendix A of this subchapter, incorporated herein by reference.

"Greenhouse gas" or "GHG" means any of the following gases: carbon dioxide (CO_2); methane (CH_4); nitrous oxide (N_2O); certain hydrofluorocarbons (HFC-23, HFC–125, HFC–134a, HFC–143a, HFC–152a, HFC–227ea, HFC–236fa, HFC–4310mee); certain perfluorocarbons (CF_4, C_2F_6, C_4F_{10}, C_6F_{14}); and sulfur hexafluoride (SF_6).

"Hazardous air pollutant" or HAP means any air pollutant listed in or pursuant to 42 U.S.C. § 7412(b).

"Hold" means to have the registry show that a DER credit is credited to one's account.

"Lowest achievable emission rate" or LAER means the control technology defined at 40 CFR § 51.165(a)(1)(xiii).

"Maintenance area" means a former nonattainment area for which the EPA has approved a maintenance plan submitted by a state under 42 U.S.C. § 7505a.

"MEG alert" means a period in which one or more electric generating units are operated at emergency capacity at the direction of the load dispatcher, in order to prevent or mitigate voltage reductions or interruptions in electric service, or both. A MEG alert begins and ends as follows:

1. An alert begins when one or more electric generating units are operated at emergency capacity after receiving notice from the load dispatcher, directing the electric generating unit to do so; and

2. An alert ends when the electric generating unit ceases operating its electric generating units at emergency capacity.

"Mobile source" means any of the following:

1. A vehicle or engine used for on-highway purposes;

2. A vehicle or engine used for nonroad purposes. Examples of vehicles used for nonroad purposes include marine vessels, locomotives, and airplanes. Examples of engines used for nonroad purposes include engines in the above vehicles, and engines smaller than 175 horsepower used in construction equipment or vehicles or farm equipment or vehicles;

3. A fuel intended for use in such a vehicle or engine; or

4. A fuel delivery system (including, but not limited to, pipelines, tanker trucks, storage tanks, and dispenser pumps) associated with a fuel intended for use by such a vehicle or engine.

"National ambient air quality standard" or NAAQS means an ambient air quality standard promulgated at 40 CFR Part 50.

"Nonattainment area" means any area that the EPA has designated or redesignated at 40 CFR Part 81 or pursuant to 42 U.S.C. § 7407 as nonattainment for the ozone NAAQS.

"Nonroad source" means a nonroad engine or nonroad vehicle, as defined at 42 U.S.C. § 7550. Examples of nonroad sources include gasoline-fueled lawnmowers, dredging and land-moving equipment, and tractors used in farming.

"NO_x credit" means a DER credit based on reductions of NO_x. One NO_x credit has an assigned value of 100 pounds (that is, one-twentieth of a ton) of NO_x.

"Operating permit" is as defined in N.J.A.C. 7:27–22.1.

"Operator" means the individual who is in control of or in charge of an emissions source while it is in operation.

"Owner" means a person who claims lawful possession of an emissions source by virtue of legal title or equitable interest therein which entitles that person to such possession.

"Oxides of nitrogen" or "NO_x" means all oxides of nitrogen, except nitrous oxide (N_2O), as measured by test methods approved by the Department and EPA, such as the test methods set forth at 40 CFR Part 60 Appendix A, methods 7 through 7E.

"Ozone season" means the portion of each year beginning May 1 and ending September 30.

"Permit insurance" means a method for a permittee to comply, through use of DER credits in accordance with N.J.A.C. 7:27–30.14(d), with a permit limit, including a limit on the amount of emissions, activity level, or hours of operation. Under this method, the reduced emissions required pursuant to a permit limit are assured of being obtained. However, instead of the permittee reducing the emissions of the emissions source subject to the permit limit, the permittee relies on voluntary emission reductions from a different emissions source, which are used as the basis for DER credits, to meet the emission reduction requirement. Generally, this method is for complying with a limit currently established in the current permit; however, in some circumstances, if a permittee has submitted an application seeking a revised permit limit, this method may be used to comply with the limit that will be established when the Department acts on the permit application. The two classes of permit insurance authorized under this subchapter are set forth at N.J.A.C. 7:27–30.14(e).

"Person" means an individual, public or private corporation, company, international entity, institution, county, municipality, state, interstate body, the United States of America, or any agency, board, commission, employee, agent, officer, or political subdivision of a state, an interstate body, or the United States of America.

"Quantification protocol" means a document setting forth the quantification guidance and methods needed for credit generation and credit use, including, but not limited to, the following:

1. For a Notice of Generation, determining the number of DER credits that have been generated by a generator source;

2. For a Notice of Intent to Use, determining the number of DER credits that a user shall hold when the notice is submitted; and

3. For a Notice of Use, determining the number of DER credits used.

"Real" means actual, genuine and authentic.

"Registry" means the electronic database, designated by the Department, which records and tracks the generation, verification, transfer, voluntary retirement, use, and invalidation of DER credits.

"Retire" means, with respect to DER credits, to make a DER credit permanently unavailable for use.

"Shutdown" means the permanent cessation of production of an emissions source, such that it no longer has economic output or emissions. For the purposes of this subchapter, scrappage of mobile sources is not considered a shutdown.

"State Implementation Plan" or "SIP" means a plan developed by New Jersey, as required under Titles I and II of the Federal Clean Air Act, and submitted by the State to the EPA. The plan sets forth the means by which the State will attain or maintain the NAAQS established by the EPA.

"Stationary source" means generally any source of air contaminant emissions, except a mobile source or a nonroad engine or nonroad vehicle.

"Surplus" means, with respect to emission reductions used for the generation of DER credits, not required pursuant to any air quality emission limit or standard in any applicable State or Federal law, regulation, permit, or order and not relied upon in a SIP.

" 'Timely and Appropriate (T & A) Enforcement Response to High Priority Violations (HPVs)' guidance document" means the EPA guidance document signed by Eric Schaeffer, Director of the Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, on December 22, 1998, and as may be amended and supplemented, incorporated by reference herein. For reference, excerpts from this guidance document are set forth herein in Appendix B. However, if a discrepancy is found between the Appendix B and the EPA document, the provisions of the EPA document shall prevail.

"Use period" means the period of time during which a user uses DER credits.

"Useful life" means the length of time that equipment or control apparatus can be expected, from the time it initially commences to operate, to continue to operate. For the purposes of this subchapter, in a case where the generation strategy is the replacement of equipment or control apparatus with lower-emitting equipment or control apparatus, this length of time shall be presumed to end five years from the date the new equipment or control apparatus commences to operate.

"User" means the owner or operator of a user source.

"User source" means any emissions source for which the owner or operator seeks to use DER credits for compliance in accordance with this subchapter.

"VOC credit" means a DER credit based on reductions of VOC. One VOC credit has an assigned value of 100 pounds (that is, one-twentieth of a ton) of VOC.

"Volatile organic compound" or "VOC" means any compound of carbon (other than carbon monoxide, carbon dioxide, carbonic acid, metallic carbonates, metallic carbides, and ammonium carbonate) which participates in atmospheric photochemical reactions. For purpose of determining compliance with emissions limits or content standards, VOC shall be measured by test methods in the approved SIP (such as N.J.A.C. 7:27B–3) or 40 CFR Part 60, as applicable, or which have been approved in writing by the Department and are acceptable to EPA. This term excludes those compounds which EPA has excluded from its definition of VOC in the list set forth at 40 CFR 51.100(s)(1), which is incorporated by reference herein, together with all amendments and supplements. As of April 9, 1998, the compounds and classes of perfluorocarbons excluded from EPA's definition of VOC at 40 CFR 51.100(s) are set forth below:

methane

ethane

methylene chloride (dichloromethane)

1,1,1–trichloroethane (methyl chloroform)

1,1,2–trichloro–1,2,2–trifluoroethane (CFC–113)

trichlorofluoromethane (CFC–11)

dichlorodifluoromethane (CFC–12)

chlorodifluoromethane (HCFC–22)

trifluoromethane (HFC–23)

1,2–dichloro–1,1,2,2–tetrafluoroethane (CFC–114)

chloropentafluoroethane (CFC–115)

2,2–dichloro–1,1,1–trifluororethane (HCFC–123)

1,1,1,2–tetrafluoroethane (HFC–134a)

1,1–dichloro–1–fluoroethane (HCFC–141b)

1–chloro–1,1–difluoroethane (HCFC–142b)

2–chloro–1,1,1,2–tetrafluoroethane (HCFC–124)

pentafluoroethane (HFC–125)

1,1,2,2–tetrafluoroethane (HFC–134)

1,1,1–trifluoroethane(HFC–143a)

1,1–difluoroethane (HFC–152a)

parachlorobenzotrifluoride (PCBTF)

cyclic, branched, or linear completely methylated siloxanes

acetone

perchloroethylene (tetrachloroethylene)

3,3–dichloro–1,1,1,2,2–pentafluoropropane (HCFC–225ca)

1,3–dichloro–1,1,2,2,3–pentafluoropropane (HCFC–225cb)

1,1,1,2,3,4,4,5,5,5–decafluoropentane (HFC 43–10mee)

difluoromethane (HFC–32)

ethylfluoride (HFC–161)

1,1,1,3,3,3–hexafluoropropane (HFC–236fa)

1,1,2,2,3–pentafluoropropane (HFC–245ca)

1,1,2,3,3–pentafluoropropane (HFC–245ea)

1,1,1,2,3–pentafluoropropane (HFC–245eb)

1,1,1,3,3–pentafluoropropane (HFC–245fa)

1,1,1,2,3,3–hexafluoropropane (HFC–236ea)

1,1,1,3,3–pentafluorobutane (HFC–365mfc)

chlorofluoromethane (HCFC–31)

1–chloro–1–fluoroethane (HCFC–151a)

1,2–dichloro–1,1,2–trifluoroethane (HCFC–123a)

1,1,1,2,2,3,3,4,4–nonafluoro–4–methoxy-butane ($C_4F_9OCH_3$)

2–(difluoromethoxymethyl)–1,1,1,2,3,3,3–heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$)

1–ethoxy–1,1,2,2,3,3,4,4,4–nonafluorobutane ($C_4F_9OC_2H_5$)

2–(ethoxydifluoromethyl)–1,1,1,2,3,3,3–heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$)

methyl acetate

perfluorocarbon compounds which fall into these classes:

cyclic, branched, or linear, completely fluorinated alkanes

cyclic, branched, or linear, completely fluorinated ethers with no unsaturations

cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations

sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine

If there is any conflict between the list at 40 CFR 51.100(s)(1) and the list set forth above, the list at 40 CFR 51.100(s)(1) shall control.

Administrative change.
See: 31 N.J.R. 639(b).
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Rewrote the section.

7:27–30.3 General provisions

(a) A DER credit represents a tradeable quantity of emission reductions, recognized pursuant to this subchapter. A credit does not constitute or convey a property right. Nothing in this subchapter shall be construed to limit the authority of the State of New Jersey or the United States to terminate or limit DER credit(s).

(b) A person may generate, transfer or voluntarily retire DER credits in accordance with this subchapter, without prior Federal, State or local government approval. A person may also use VOC or NO_x credits without such prior approval, except when the credits are to be used pursuant to N.J.A.C. 7:27–30.14(g) to comply with emission offset requirements under N.J.A.C. 7:27–18.

(c) Only a whole number of DER credits may be generated, verified, transferred, voluntarily retired, used, found invalid, or cancelled.

Administrative change.
See: 29 N.J.R. 2561(a).
In (d), changed the address for emissions trading registry submittals.
Administrative change.
See: 30 N.J.R. 4041(a).
Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Rewrote the section.

7:27–30.4 DER credit generation: general requirements

(a) A person may generate one or more DER credits pursuant to this section. However, no person may generate one or more credits unless the person:

1. Implements a generation strategy which reduces the actual emissions of a generator source or group of generator sources below its baseline emissions;

2. Conforms to all applicable provisions of this subchapter, including, but not limited to, the requirement that a DER credit be based on emission reductions that are real, surplus, and properly quantified; and

3. Is authorized under (b) below to be the generator of the credits.

(b) The generator of a DER credit shall be the owner or operator of the generator source, except as provided in (c) below, and except in the following circumstances:

1. The generator source is a fuel, and the generation strategy is the reformulation of the fuel so as to decrease emissions from the fuel as it is distributed, stored, and/or sold for use in New Jersey. In such case, the person who implements the reformulation (that is, the owner or operator of the refinery or, if applicable, a person who is defined pursuant to N.J.A.C. 7:27–25.1 as a blender) is authorized to be the generator;

2. The generator source(s) are mobile sources or nonroad sources operated in New Jersey, and the generation strategy is:

i. The reduction in the sources' activity levels through implementation of an activity reduction plan approved by the EPA or a State agency (such as an employee commute option plan approved by the State Department of Transportation under N.J.A.C. 16:50). In such case, the person who obtains approval of and implements the plan is authorized to be the generator;

ii. The replacement of conventional vehicles in a fleet with lower-emitting vehicles or the modification of fleet vehicles to make them lower-emitting. In such case, the owner of the fleet is authorized to be the generator; and

iii. The testing (or more frequent testing) and repair of motor vehicles. In such case, the person who conducts the test and repair program is authorized to be the generator;

3. The generator sources are consumer or commercial products (such as architectural coatings) which release emissions during their distribution, storage, or use, and the generation strategy is the reformulation or redesign of the products so that less emissions are released during the product's distribution, storage or use in New Jersey. In such case, the person who produces the reformulated or redesigned product (that is, the product manufacturer) is authorized to be the generator;

4. The generator sources are electric generating units located in New Jersey, and the generation strategy is the reduction in the electric generating units' activity level by implementing electrical energy efficiency measures in a residential, commercial, industrial, institutional, or governmental facility that is located in New Jersey. In such case, the person who is the electricity consumer (that is, the owner or operator of the facility) is authorized to be the generator; or

5. The generator source is the production of virgin materials (including, but not limited to, their extraction, harvesting, or manufacture, and their handling and transport) that are sold for use as a consumer or commercial product in New Jersey, or that are used as a raw material in a manufacturing process in New Jersey; and the generation strategy is the substitution of recycled materials for the virgin materials. In such case, the person who produces the recycled material in a form in which it is used (either as a product or as a raw material) as a substitute for virgin material is authorized to be the generator. For example, for recycled plastics, the post-consumer or post-industrial processor who produces recycled polymers in the form (pellets or flakes) that they are used by a plastics product manufacturer is authorized to be the generator.

(c) If the person authorized to generate credits under (b) above enters a collective agreement under which the generation strategy would be implemented by another person authorized by the agreement to act on behalf of all signatories to the agreement, then the right to generate credits based on that strategy transfers to the other person, and the individual signatories are preempted from being generators.

(d) If the generation strategy entails a change in equipment or control apparatus and that change is subject to permit requirements under N.J.A.C. 7:27–8 or 22, the following applies:

1. A permittee shall obtain the new permit or the modification or revision of the existing permit prior to commencing implementation of the generation strategy; or

2. If the "at-risk" provisions of N.J.S.A. 26:2C–9.3 and 4 and/or N.J.A.C. 7:27–8.25(a) apply, a permit applicant may commence implementation of the generation strategy while the review of the permit application is pending. However, if the Department does not approve the generation strategy as set forth in the permit application, the emissions reductions realized during the "at-risk" period may not be used as a basis for DER credit generation.

(e) DER credits shall be based only on discrete emission reductions that are real and surplus, and are quantified in accordance with N.J.A.C. 7:27–30.5, 30.24, and 30.25.

(f) If DER credits are to be based on reductions in emissions of a compound which may be classified as either a VOC or a GHG, then a generator may generate either VOC credits or GHG credits, but not both.

(g) The generation period for any batch of DERs shall not exceed one year. However, if a single generation strategy continues year after year to realize reductions, a generator may each year generate DER credits based on the strategy, provided that the generator meets the notice requirements set forth at N.J.A.C. 7:27–30.7 for each successive generation period.

Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Rewrote the section.

7:27–30.5 DER credit generation: computation of credits

(a) A generator shall calculate the quantity of DER credits generated in accordance with this section and a quantification protocol that satisfies the requirements of N.J.A.C. 7:27–30.24 and 30.25.

(b) The number of DER credits generated shall be determined by calculating the quantity of discrete emission reductions on which credits may be based in accordance with (c) below; and then converting this quantity to a number of credits in accordance with (i) below.

(c) The quantity of discrete emission reductions on which credits may be based shall be calculated in accordance with the following formula:

ER = (Baseline Emissions) − (Actual Emissions)
where:
ER = the quantity of discrete emission reductions generated during the generation period, given in units of weight (for example, pounds or tons);
Baseline Emissions = the quantity of emissions which the generator source would have emitted during the generation period if the generator had not implemented the generation strategy to reduce the emissions. If the generator source is a facility, or is equipment, control apparatus, manufacturing process or other operation located at a facility, this quantity shall be determined in accordance with (d) below, except when the generator is generating credits over multiple consecutive years. In such case, for the second year, and each year thereafter, baseline emissions shall be determined in accordance with (g) below; and
Actual Emissions = the quantity of emissions that the generator source actually emitted during the generation period.

(d) If the generator source is a facility, or is equipment, control apparatus, manufacturing process or other operation located at a facility, the source's baseline emissions shall equal the amount of the source's adjusted historic emissions, unless the source's allowable emissions and/or the source's measured emissions can be determined and unless either or both of these amounts of emissions are less than the source's adjusted historic emissions. In such case, the source's baseline emissions shall be the lowest of the following: the source's allowable emissions (if determined), the source's adjusted historic emissions, and the source's measured emissions (if determined). Each of these shall be determined as follows:

1. The source's allowable emissions cannot be determined if no emissions limit established by Federal or State law, rule, or regulation or by order applies to the source. However, if such a limit applies, the source's allowable emissions shall be determined using the source's actual activity level and actual hours of operation during the generation period and the lowest allowable emission rate which applies to the generator source during the generation period, minus a design margin. In determining the lowest allowable emission rate, the following shall be taken into consideration if applicable:

i. If the Department has approved a higher emission rate as an alternative emission limit for the source pursuant to N.J.A.C. 7:27–16 or 19, the rate which would have applied in the absence of the alternative emission limit (and not the alternative emission limit) shall be taken into consideration in determining the lowest allowable emission rate which applies to the source; and

ii. If a new permit or operating certificate, or a revision or modification of an existing permit or operating certificate, is required under N.J.A.C. 7:27–8 or 22

for the generation strategy, the permit or operating certificate limit which shall be taken into consideration in determining the lowest allowable emission rate which applies to the source is:

(1) If the new permit or operating certificate, or a revision or modification of an existing permit or operating certificate, was issued by the Department prior to June 6, 2000, the new limit; and

(2) If the new permit or operating certificate, or a revision or modification of an existing permit or operating certificate, was issued by the Department on or after June 6, 2000, the limit which applied prior to the issuance of the new or revised permit or operating certificate (and not the new limit);

2. The source's adjusted historic emissions shall be its historic emissions adjusted for any difference between the source's economic output during the historic baseline period and during the generation period. A source's adjusted historic emissions shall be determined in accordance with the following formula:

$$\text{Adjusted Historic Emissions} = \left(\frac{EO_G}{EO_H}\right) \text{(Historic Emissions)}$$

where:

Adjusted Historic Emissions = The source's historic emissions, adjusted for any difference between the source's economic output during the historic baseline period and during the generation period;

EO_G = The economic output of the generator source during the generation period;

EO_H = The generator source's historic economic output determined in accordance with (e) below, expressed in the same units as is used for economic output during the generation period; and

Historic Emissions = The emissions calculated in accordance with (e) below; or

3. The source's measured emissions cannot be determined if it is not technically feasible to measure the emission stream upstream of the point of application of the generation strategy. However, if such measurements can be taken, the source's measured emissions shall be determined using the source's actual activity level and actual hours of operation during the generation period and the emission rate which would have resulted had the generation strategy not been applied, determined from measurements made upstream of the point of application of the generation strategy. If the strategy entails the replacement of a control apparatus, subtract the emission reductions that would have been realized by the replaced control from the total emissions calculated.

(e) A generator source's historic emissions shall be calculated using the source's historic emission rate, historic activity level, and historic hours of operation. These terms, as well as the source's historic economic output, shall be derived as follows:

1. Determine the source's historic baseline period, as follows:

i. If the source has operated for less than two years since January 1, 1990, the source's historic baseline period shall be the interval which corresponds to the generation period in the year immediately preceding the first day of the generation period; and

ii. If the source has operated for two or more years since January 1, 1990, the source's historic baseline period shall be one of the following:

(1) The two intervals which correspond to the generation period in each of the two years immediately preceding the first day of the generation period, unless the generator is generating "early" credits pursuant to N.J.A.C. 7:27–30.6(b)3 or (d). In such case, the source's historic baseline period shall be the two intervals which correspond to the generation period in each of the two years immediately preceding the date the generation strategy was first implemented; or

(2) If the generator demonstrates that any two intervals which correspond to the generation period within the five years preceding the first day of the generation period (or, for "early" credit generation, preceding the date the generation strategy was first implemented) are more representative of normal operations, these two other intervals;

2. Using the historic baseline period determined under (e)1 above, determine the value of the terms, as follows:

i. The source's historic emission rate shall be its average emission rate during the historic baseline period;

ii. The source's historic activity level shall be its average activity during the historic baseline period;

iii. The source's historic hours of operation shall be its average hours of operation per interval during the historic baseline period. Therefore, if the historic baseline period includes two intervals, the source's historic hours of operation would be its total hours of operation during the historic baseline period divided by two; and

iv. The source's historic economic output shall be its average economic output per interval during the historic baseline period. Therefore, if the historic baseline period includes two intervals, the source's historic economic output would be its total economic output during the historic baseline period divided by two.

(d) No DER credit shall be transferred if the credit has been used or retired, or if it has been canceled or designated as invalid pursuant to N.J.A.C. 7:27–30.29.

Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Rewrote the section.

7:27–30.10 DER credit verification

(a) A DER credit to be used in New Jersey shall be considered to be verified only if:

1. The credit is in the set of NO_x credits verified by the Department on April 25, 1995;

2. The credit is in a batch verified by one of the following persons:

i. A professional engineer licensed by the New Jersey Board of Professional Engineers and Land Surveyors pursuant to N.J.S.A. 45:8–27 et seq.; or

ii. A certified public accountant licensed by the New Jersey Board of Accountancy pursuant to N.J.S.A. 45:2B–1 et seq.; or

3. The credit has been verified by the air pollution control agency of another state or in accordance with the verification procedures of the other state, provided that:

i. The credit was generated in the other state; and

ii. The Department has entered into an interstate agreement with the air pollution control agency of the other state which expressly allows credit verifications performed under the auspices of the other state to be recognized in New Jersey.

(b) Although a generator may engage a verifier to perform a verification, the verifier shall otherwise be independent of the generator. A verifier shall not be considered independent if:

1. The verifier is employed by the generator, or was employed by the generator within the six months before the verification;

2. The verifier is employed by an entity that prepared the Notice of Generation or any of its supporting documentation for the batch of DER credits being verified, assisted the generator in such preparation, or otherwise assisted the generator in connection with the generation of the batch of DER credits being verified;

3. The generator is owned, in whole or part, or is subject to control, by the verifier or the verifier's employer; or

4. The employer of the verifier is owned, in whole or part, or is subject to control, by the generator.

(c) In performing a verification, a verifier shall consider all the DER credits included in the batch covered by a Notice of Generation. A verifier can verify a DER credit only if the verifier makes all of the following findings, based on diligent inquiry that is not limited to reliance upon representations made by the generator:

1. The Notice of Generation, together with any amendment thereto, includes all of the information, statements, supporting documentation, and certification required under this subchapter and the applicable quantification protocol;

2. The Notice of Generation, together with any amendment thereto, and including all statements made therein and all the supporting documentation, appears on its face to be true, accurate and complete;

3. The notice, together with any amendment thereto, documents that all calculations relied on in the notice were performed as required under N.J.A.C. 7:27–30.5 and a quantification protocol which meets the requirements of N.J.A.C. 7:27–30.24 and 30.25; and

4. The notice, together with any amendment thereto, establishes that the DER credits are based on emission reductions which are real and surplus, and which satisfy all other applicable requirements of this subchapter for the generation of DER credits.

(d) After making a determination as to whether some or all of the DER credits in the batch can be verified, the verifier shall submit a complete Notice of Verification to the registry in accordance with this section, the general notice requirements at N.J.A.C. 7:27–30.18, and the requirements for submission of notices at N.J.A.C. 7:27–30.19.

(e) A Notice of Verification shall include the following:

1. The name, address, and other pertinent identifying information for:

i. The verifier, including the number of the verifier's New Jersey professional engineer or certified public accountant license;

ii. The verifier's employer; and

iii. The person for whom the verifier is performing the verification;

2. The serial number assigned to each DER credit in the batch;

3. Specification of whether all the credits in the batch are verified, part of the credits in the batch is verified, or none of the batch is verified; if the verifier has determined that he or she is able to verify only part of the credits in the batch, specification of the number of credits verified, together with an explanation of why all the credits cannot be verified;

4. The following statements:

i. A statement that the verifier has made each of the specific findings required under (c) above, based on the diligent inquiry required under (c) above; and

ii. A statement attesting that the verifier is, in accordance with (b) above, independent of the generator;

5. Disclosure of whether or not the verifier or the verifier's employer is a holder of any credits in the batch; and

6. The certification by the verifier as required under N.J.A.C. 7:27–30.18(e).

(f) A credit shall not be considered to be verified if the Notice of Verification that applies to the credit is no longer valid. No Notice of Verification is valid if, subsequent to the verifier's submission of the Notice of Verification to the registry, an amendment to the Notice of Generation is submitted to the registry which substantively changes any of the information on which the verification was based, including, but not limited to, changes to any of the following:

1. The number of DER credits which have been generated;

2. The method used to calculate the number of DER credits generated; or

3. The data or other information on which the calculation is based.

(g) Any person may have a batch of DER credits verified, even if the batch has already been verified. Therefore, the registry may reflect more than one Notice of Verification for a single batch of DER credits.

(h) If the Department or the EPA determines that a verification is defective, the Department or the EPA will notify the operator of the registry, the verifier, and any person who has used a credit in the batch of its finding.

(i) Notwithstanding the provisions of this section, for any Notice of Generation submitted to the registry prior to June 6, 2000, a verifier shall meet the applicable requirements promulgated at N.J.A.C. 7:27–30.10 on August 5, 1996, at 28 N.J.R. 3786(b); and the verification shall be performed in accordance with the standards set forth in the rules promulgated on August 5, 1996, at 28 N.J.R. 3786(b).

Amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Rewrote the section.

7:27–30.11 Voluntary retirement of DER credits

(a) A holder of a DER credit may voluntarily retire that credit by submitting a Notice of Retirement to the registry in accordance with this section, the general notice requirements at N.J.A.C. 7:27–30.18, and the requirements for submission of notices at N.J.A.C. 7:27–30.19.

(b) A Notice of Retirement shall include the following:

1. Information to identify the holder who is retiring the credit(s);

2. The serial number assigned to each DER credit being voluntarily retired; and

3. The certification by the holder who is retiring the credits as required pursuant to N.J.A.C. 7:27–30.18(e).

(c) DER credits which are being voluntarily retired under this section do not need to be verified prior to being retired.

(d) A person who submits a Notice of Retirement may subsequently amend the notice pursuant to N.J.A.C. 7:27–30.20 to correct an error in the notice.

(e) When DER credits are being used pursuant to N.J.A.C. 7:27–30.12, a Notice of Retirement shall not be submitted for the retirement of 10 percent of the credits being used (or, if the use is a "permit insurance" use pursuant to N.J.A.C. 7:27–30.14(d) and (e), 20 percent of the credits being used) for the benefit of the environment. Such retirement is an integral part of the use and is covered in the Notice of Use.

(f) No person may transfer or use a DER credit that has been retired, and no person may withdraw a Notice of Retirement.

New Rule, R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Former N.J.A.C. 7:27–30.11, DER use: general requirements, recodified to N.J.A.C. 7:27–30.12.

7:27–30.12 VOC and NO_x credit use: general requirements

(a) A DER credit, based on reductions of VOC or NO_x emissions, may be used for compliance under this section.

(b) A VOC or NO_x credit shall be considered a limited authorization to emit NO_x or VOC in accordance with the provisions of this subchapter, the Federal Clean Air Act, the New Jersey Air Pollution Control Act (N.J.S.A. 26:2C–1 et seq.) and rules promulgated thereunder. However, nothing in this subchapter shall be construed to limit the authority of the State of New Jersey or the United States to terminate or limit such authorization.

(c) A user may use a credit for compliance only if the registry shows that the user holds the credit, that the DER credit is verified, that the credit has not been used previously or retired, that the credit has not been cancelled pursuant to N.J.A.C. 7:27–30.29(b), and that the credit has not been found to be invalid by either the Department or the EPA.

(d) A user shall not use a NO_x credit to comply with a VOC requirement, and shall not use a VOC credit to comply with a NO_x requirement.

(e) A user shall not use a VOC or NO_x credit based on emission reductions that occurred outside the ozone season to comply with any requirement during the ozone season.

(f) A use period shall not exceed one year. However, a given use may be continued over consecutive use periods, provided that the notice requirements set forth at N.J.A.C. 7:27–30.15 and 30.16 are met for each use period.

(g) Except in a case where the use is exempted from the requirement for a Notice of Intent to Use pursuant to N.J.A.C. 7:27–30.15(e), a use period shall not begin until a complete Notice of Intent to Use has been submitted to the registry in accordance with N.J.A.C. 7:27–30.15 and 30.19. Additionally:

1. If the user source is located within 100 kilometers of Edwin B. Forsythe National Wildlife Refuge (see Appendix C for a delineation of this area), the use period shall not begin until 30 days after the user submits a copy of the Notice of Intent to Use to the Federal Land Manager, pursuant to N.J.A.C. 7:27–30.19(h); and

2. If the user source is permitted under N.J.A.C. 7:27–8 or 22, and the use entails an increase in the actual emissions of any air contaminant (including, but not limited to, any "permit insurance" use listed at N.J.A.C. 7:27–30.14(d)), the use period shall not begin until seven days after the Notice of Intent to Use has been submitted to the Department as a seven-day-notice, pursuant to N.J.A.C. 7:27–8.3(k) or 22.22(d).

(h) Whenever credits are used, the user shall retire 10 percent of the total number of the credits used for the benefit of the environment, unless the use is a "permit insurance" use pursuant to N.J.A.C. 7:27–30.14(d) and (e), in which case the user shall retire 20 percent of the total number of the credits used for the benefit of the environment. In determining the number of credits needed for a use, the credits required to be retired are additional to the credits otherwise required for the use.

(i) The user shall hold DER credits as follows:

1. For the a "permit insurance" use pursuant to N.J.A.C. 7:27–30.14(d) and (e), the user shall hold the full quantity of DER credits needed for compliance during the use period by the day the Notice of Intent to Use is submitted to the registry;

2. For a use of DER credits to meet emission offset requirements, the user shall hold DER credits as required pursuant to N.J.A.C. 7:27–30.14(f);

3. For a use for which no Notice of Intent to Use is required, pursuant to N.J.A.C. 7:27–30.15(e), the user shall hold the full quantity of DER credits required for compliance by the day the Notice of Use is submitted to the registry;

4. For any other use, the user shall hold the credits needed for compliance (including any credits required pursuant to N.J.A.C. 7:27–30.13(d)2, 3 and 4ii, iii and iv) on any given date within the use period by the day before that date, except as provided at (i)5 below;

5. If on any day within the use period the number of credits held by the user for the use is less than the number required to be held under (i)4 above, the number of DER credits needed for compliance for each day the shortfall occurs shall be tripled;

6. Once a user holds a DER credit pursuant to (i)1 through 5 above, the user shall continue to hold the DER credits until the Notice of Use is filed; and

7. In all cases the user is required to hold all DER credits needed for the use at the time the Notice of Use is submitted.

(j) If any DER credit being held for a use pursuant to (i)2 through 7 above subsequently proves not to be needed for the use, the user may, after the Notice of Use is submitted, trade, voluntarily retire, or use these credits for other purposes allowed under this subchapter.

(k) If a user has used a DER credit that is designated as invalid pursuant to N.J.A.C. 7:27–30.29(a) or cancelled pursuant to N.J.A.C. 7:27–30.29(b), the user shall, within 60 days after receiving notice of the invalidation or cancellation, submit to the registry an amendment of the Notice of Use which replaces the invalid DER credit with a valid credit, identified by its serial number.

(*l*) If all the verifications of a DER credit that a user has used are rendered invalid pursuant to N.J.A.C. 7:27–30.10(f) or (h), the user shall, within 60 days after receiving notice of the invalidation of the verification:

1. Ensure that a new Notice of Verification is submitted to the registry which verifies the original DER credit; or

2. Submit to the registry an amendment of the Notice of Use which replaces the invalid DER credit with a verified credit, identified by its serial number.

(m) The Department may request an interim calculation to determine whether the user source's use of credits, as of any date during the use period, has exceeded the maximum number of credits, as set forth by the user in the Notice of Intent to Use. The user shall submit the interim calculation to the Department within 15 days after receiving the Department's request.

(n) Any person who submits a Notice of Intent to Use to the registry shall, after the use period, submit a Notice of Use, in accordance with N.J.A.C. 7:27–30.16, even if the person determines that no credits were used during the use period.

(*o*) If a permittee wants more flexibility, with respect to applicable permit limits, than is allowed under the "permit insurance" provisions at N.J.A.C. 7:27–30.14(d) and (e), then the permittee may apply to the Department for approval of a 15–year plan for the permittee's facility, pursuant to N.J.S.A. 26:2C–9.2c(3).

Recodified from N.J.A.C. 7:27–30.11 and amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Rewrote the section. Former N.J.A.C. 7:27–30.12, DER use: computation of DERs, recodified to N.J.A.C. 7:27–30.13.

7:27–30.13 VOC and NO_x credit use: computation of DER credits

(a) A user shall calculate the following in accordance with this section and a quantification protocol that satisfies the requirements of N.J.A.C. 7:27–30.24 and 30.25:

1. If the user is required to hold the full number of DER credits needed for compliance when a Notice of Intent to Use is submitted pursuant to N.J.A.C. 7:27–30.12(i)1, the number of credits that need to be held; and

2. The number of DER credits that were used during a use period.

(b) The number of DER credits that need to be held pursuant to N.J.A.C. 7:27–30.12(i)1 when a Notice of Intent to Use is submitted shall be determined as follows:

1. Determine the maximum quantity of excess VOC or NO_x emissions from the user source, expressed in pounds, that may occur during the use period. The maximum quantity of excess emissions shall be 100 percent of the increase in allowed emissions (above the permit limit in the current permit) of the equipment or control apparatus during the use period. This shall be determined in accordance with the following formula:

$$EE = (CR - PL)\,(T)$$

where:

EE = the maximum quantity of excess emissions which may be released during the use period, expressed in pounds of VOC or NO_x;

CR = the "ceiling rate," that is the maximum emission rate, specified by the user in the Notice of Intent to Use pursuant to N.J.A.C. 7:27–30.14(d)1ii, which is allowed during the use period, expressed in the same units as used above for the permit limit;

PL = the permit limit which is currently in effect. This limit establishes the rate which is (in the absence of the use of credits) the maximum allowable emission rate for the user source, expressed in emissions per unit time. If the limit in the permit is given in emissions per unit of time, the units used for this rate shall be the same as are used in the permit; otherwise, the limit in the permit shall be converted to and expressed as pounds per hour; and

T = the maximum amount of time within the use period which the equipment or control apparatus is allowed to operate under its currently effective permit, expressed in the same units for time as are used to express the permit limit and the ceiling rate;

2. If the use of VOC or NO_x credits for compliance may result in increased actual emissions of VOC or NO_x, respectively, from one or more emissions sources other than the user source, located at the facility or offsite, add the quantity of those potential VOC or NO_x emission increases to the quantity of emission increases established under (b)1 above; and

3. Convert the quantity of VOC or NO_x emission increases determined pursuant to (b)1 and 2 above to the number of DER credits that need to be held when a Notice of Intent to Use is submitted as follows:

i. Divide the quantity of emission increases calculated under (b)1 and 2 above, expressed in pounds, by 100;

ii. If the user will submit the complete Notice of Intent to Use late, increase the quantity calculated under (b)3i above for such lateness in accordance with N.J.A.C. 7:27–30.15(b);

iii. If the user fails to hold the full number of DER credits needed for compliance by the day the Notice of Intent to Use is submitted, increase the quantity calculated under (b)3i and ii above for such failure in accordance with N.J.A.C. 7:27–30.12(i)5;

iv. In order to ensure that the requirement to retire 10 percent of the total number of credits being used (or, if the use is a "permit insurance" use pursuant to N.J.A.C. 7:27–30.14(d) and (e), 20 percent of the total number of credits used) for the benefit of the environment pursuant to N.J.A.C. 7:27–30.12(h)is met, divide the result obtained under (b)3i through iii above by the following:

(1) If the use is a "permit insurance" use, by 0.8; and

(2) Otherwise, by 0.9; and

v. If the result obtained under (b)3iv above is a whole number, that is the number of DER credits that need to be held when a Notice of Intent to Use is submitted; otherwise round the result up to the next highest whole number to determine the number of DER credits that need to be held.

(c) The number of DER credits that were used during a use period shall be determined as follows:

1. For uses subject to N.J.A.C. 7:27–30.12(i)1, where the full number of credits needed for compliance is to be held when the Notice of Intent to Use is submitted, the number of credits shall be determined in accordance with (b) above;

(d) Within 15 days after receiving a request from the Department, a generator, user or verifier shall submit to the Department information which the Department finds reasonably necessary to determine if the generation, verification, proposed use, or use of DER credits complies with this chapter and all applicable State and federal laws and regulations. This information includes, but is not limited to, copies of any notice required to be submitted to the registry under this subchapter, all supporting documentation required by the quantification protocol used or by N.J.A.C. 7:27–30.25.

(e) The operator of the registry shall retain records of any notifications provided to users pursuant to N.J.A.C. 7:27–30.8(h) until five years after all DER credits in any affected batch (that are not canceled or found to be invalid) are used or voluntarily retired.

Recodified from N.J.A.C. 7:27–30.18 and amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Rewrote the section. Former N.J.A.C. 7:27–30.22, Penalties, recodified to N.J.A.C. 7:27–30.30.

7:27–30.23 Public availability

(a) All information submitted to the Department or the registry under this subchapter and any supporting documentation required to be retained by a generator or user pursuant to N.J.A.C. 7:27–30.25 is a public record under N.J.S.A. 47:1A–2. To inspect, copy or obtain a copy of any public record held by the registry, a person shall submit a request to the registry at the address listed in N.J.A.C. 7:27–30.8(b). To inspect, copy or obtain a copy of any public record held by the Department, a person shall submit a request to:

Department of Environmental Protection
Office of Legal Affairs
Attention: Public Records Requests
401 East State Street
PO Box 402
Trenton, New Jersey 08625–0402

(b) A generator or user shall make all notices and amendments thereto, as well as any required supporting documentation, available for inspection to any person who requests it.

Recodified from N.J.A.C. 7:27–30.19 and amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
In (a), inserted "and any supporting documentation required to be maintained by a generator or user pursuant to N.J.A.C. 7:27–30.25" following "subchapter" in the first sentence, and changed N.J.A.C. reference in the second sentence; and rewrote (b).

7:27–30.24 Standards for quantification protocols

(a) Each generator or user shall use a quantification protocol that conforms with this section and content requirements for quantification protocols at N.J.A.C. 7:27–30.25. A generator or user shall follow the protocol to perform the quantifications required for a Notice of Generation, a Notice of Intent to Use, or a Notice of Use. The generator or user shall demonstrate conformance with the protocol to show that the number of DER credits generated or needed for compliance has been properly calculated.

(b) A generator shall use a given protocol only if it applies to the generator source and to the specific generation strategy implemented to reduce emissions. A user shall use a given protocol only if it applies to the user source and to the specific use.

(c) A quantification protocol shall not be found acceptable by the Department or a verifier unless:

1. The methods and guidance it sets forth conform with all applicable guidance issued by the EPA. If applicable EPA-approved measurement, testing and monitoring methods are available, the protocol shall specify that these methods shall be used;

2. The method it prescribes for calculating the number of DER credits generated or the number of DER credits needed for compliance has sufficient detail so as to enable the Department, a verifier, or the EPA to evaluate the validity of the calculation; and

3. The protocol requires that the data on which each calculation is based are the most representative, accurate, current, and reliable data available. Therefore, for emissions data:

i. If a generator or user would have actual emissions data available, the protocol shall specify that a generator or user shall use this data in the calculation, as applicable, rather than imputed or estimated amounts; and

ii. For a stationary source, the Department has prepared guidance to assist in selecting the technique(s) to be required by the protocol to measure and quantify actual emissions. This guidance document is entitled "Hierarchies of Quantification Techniques," and a copy of this guidance document may be obtained in accordance with (j) below. This guidance may be used to help select the technique(s) to be used for measuring and quantifying actual emissions. However, following this guidance will not necessarily, in all cases, lead to identifying the technique(s) which are the most accurate and reliable technique(s) available. In such a case, the guidance shall not be followed, and the technique(s) which are the mot accurate and reliable technique(s) available shall be selected for inclusion in the protocol.

(d) If the EPA has approved a quantification protocol that is applicable and that meets the requirements of N.J.A.C. 7:27–30.25, the generator or user shall use:

1. The EPA-approved protocol; or

2. An alternate quantification protocol that deviates from the EPA-approved protocol, but meets the requirements of N.J.A.C. 7:27–30.25 and has been approved by EPA prior to the generator's submission of the Notice of Generation or the user's submission of the Notice of Intent to Use.

(e) If the EPA has approved a quantification protocol that is applicable, but does not address all the requirements of N.J.A.C. 7:27–30.25, the generator or user shall use a quantification protocol that both meets the requirements of N.J.A.C. 7:27–30.25 and also incorporates one of the following:

1. The EPA-approved protocol; or

2. Alternate elements that deviate from the EPA-approved quantification protocol, but that have been approved by EPA prior to the generator's submission of the Notice of Generation or the user's submission of the Notice of Intent to Use.

(f) If the EPA has not approved a quantification protocol that is applicable, the generator or user shall use:

1. A protocol approved by the Department and made available pursuant to (h) below; or

2. Another protocol that meets the requirements of N.J.A.C. 7:27–30.25. The generator or user need not obtain EPA's or the Department's approval before using such a protocol.

(g) In developing a generation protocol for emission reductions due to implementation of energy efficiency measures, a generator or user is encouraged to refer to and utilize, as applicable, the guidance document "Measurement Protocol for Commercial, Industrial and Residential Facilities," issued by New Jersey's Board of Public Utilities (BPU) on April 28, 1993. A copy of the document may be obtained from:

New Jersey Board of Public Utilities
2 Gateway Center
Newark, New Jersey 07102

(h) Before approving an emissions quantification protocol for any source or class of sources, the Department shall provide an opportunity, announced through a public notice in the New Jersey Register, for comment on the proposed protocol. Once the Department approves any emissions quantification protocol, it will make the protocol publicly available for use by owners or operators of generator sources or user sources to which the protocol applies. Copies of approved protocols may be requested as set forth in (j) below.

(i) No generator or user may use a quantification protocol, unless they have available and are willing to provide in full the information required pursuant to a quantification protocol that meets the requirements of this section and N.J.A.C. 7:27–30.25.

(j) A copy of an approved emissions quantification protocol or of the guidance document entitled "Hierarchies of Quantification Techniques" may be obtained as follows:

1. A copy may be downloaded from the Department's website at http://www.state.nj.us/dep/aqm/omet; or

2. A copy may be requested from:

Department of Environmental Protection
Office of Air Quality Management
PO Box 418
Trenton, New Jersey 08625–0418
Attention: OMET Program
Telephone: (609) 777–1345

New Rule, R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).

7:27–30.25 Contents of quantification protocols

(a) A quantification protocol shall set forth the following:

1. The emissions source, or class of emission sources, to which the protocol applies. Each class shall be described with sufficient detail and specificity so as to enable a person to determine unambiguously whether or not any given source belongs to the class;

2. The generation strategy(s) or use(s) to which the protocol applies. Each generation strategy and each use shall be described with sufficient detail and specificity so as to enable a person to determine unambiguously whether or not the protocol applies to any given generation strategy or use;

3. The formula(s)to be used to calculate the number of DER credits that have been generated during the generation period; the number of DER credits that need to be held when a Notice of Intent to Use is submitted; the number of DER credits used during a use period; or the quantity of actual emission increases during the use period, as applicable;

4. The method(s) to be used to derive each term used in the formula(s) specified pursuant to (a)3 above (for example, the method to be used for determining "baseline emissions"), including, but not limited to:

i. Any test method(s) or other technique(s) to be used for determining actual emission increases or decreases, together with specification of the parameters to be measured, the measurement methods to be used (for example, specific methods for continuous emissions monitoring, stack testing, or predictive emissions monitoring) and the rationale for requiring use of these specific methods;

ii. For a stationary or mobile source, the method for establishing its activity level, including the measurement methods to be used to collect the activity level data (such as monitoring of fuel use or hours of operation), and the rationale for requiring use of these methods; and

iii. For a product, the methods for determining the quantity of product distributed, stored, or used in New Jersey, and the rationale for requiring use of these methods;

5. For a generation protocol, with respect the "economic output" term in the formula, one of the following:

i. The unit of economic output to be used in the calculation, together with an explanation of why this is an appropriate unit, specification of the measurement methods to be used to collect the economic output data (such as monitoring of the BTU's of heat energy supplied), and the rationale for requiring reliance on these methods; or

ii. The methods a generator shall use to develop an appropriate unit of economic output for the generator source;

6. The method(s) the generator or user shall use to document the derivation of each term used in the formula(s) given pursuant to (a)3 above, including, but not limited to, the procedures to be used to compile, summarize, analyze and report emissions data, activity level data, and economic output data;

7. For the air contaminant on which the credits are based (for example, for VOC, if the credits generated or used are VOC DERs), the methods to be used for determining;

i. Whether the credit generation or credit use has resulted in an increase in emissions of that air contaminant, from other source(s) at the facility or off-site, including, but not limited to, increases due to a shifting of production to or an increase in activity of the other source; and

ii. If so, the method(s) to be used for determining the quantity of such emissions increase;

8. The methods for determining the design margin. Such methods shall take into account historical compliance margins for the parameter in question, reflecting the individual generator's or user's past performance in meeting the requirement. In the case of a new requirement, the methods may based either on the individual generator's or user's past performance in meeting past requirements or on an industry average compliance level;

9. The methods to be used for determining if the generation or use of DER credits has resulted in an increase in the actual emissions of any other air contaminant, including any HAP, either from the generator or user source, from other source(s) at the facility, and/or from source(s) off-site; and if so, the method(s) to be used for determining the quantity of the increase;

10. For DER credit generation, the methods to be used for determining the following:

i. The quantity of product distributed, stored or used in New Jersey, pursuant to N.J.A.C. 7:27–30.4(a)3; and

ii. The quantity of recycled materials that was sold for use as a consumer or commercial product in New Jersey, or were conveyed to a manufacturer in New Jersey for use as a raw material in the manufacturer's production process, pursuant to N.J.A.C. 7:27–30.4(a)5;

11. Any emission factors or constants to be used, together with either a citation of the source of the factors or constants or an explanation of how they were derived; and

12. Assumptions that a generator or user shall or may make in performing any of the calculations.

(b) A quantification protocol shall specify the supporting documentation that a generator or user (as applicable) shall provide with a notice, as an integral part thereof. This documentation shall include:

1. Explanation of the following:

i. The assumptions made in the calculations, other than those required by the protocol to be used pursuant to (a)12 above;

ii. If the protocol allows the use of more than one method for monitoring, testing, or otherwise determining variables such as the quantity of emissions, activity level, or economic output), an explanation of why the method used was selected;

iii. The steps taken to minimize uncertainty in the methods used and the data on which the calculations are based, including a description of steps taken to assure precision and avoid bias; or if uncertainty cannot be minimized, an explanation of how the calculation method has been modified to account for imprecision and/or bias;

iv. If the generation or use of credits has resulted in an increase, from another source at the facility or elsewhere, in emissions of the same type of air contaminant as that on which the credits are based (for example, VOC emissions, if the credits generated or used are VOC DERs), an explanation of the causes of the increase in emissions;

v. For a generation protocol, if the user determined the unit of economic output to be used in the calculations pursuant to (a)5ii, an explanation of why it is an appropriate unit, the measurement methods used to collect the economic output data (such as monitoring of the BTU's of heat energy supplied), and the rationale for reliance on these methods;

2. Any calculations performed, including for the determination of:

i. The number of credits generated, the number of DER credits that need to be held when a Notice of Intent to Use is submitted, or the number of DER credits that were used during a use period;

ii. The quantity (if any) of the actual emissions increase of any HAP, including the quantity from the generator or user source, from other source(s) at the facility, and/or from source(s) off-site: and

iii. The quantity of the increase or decrease in actual emissions of VOC or NO_x;

3. A listing of all State and Federal air quality regulations, orders and permits that apply (for generation protocols) to the generator source or (for use protocols) to the user source, and any emission limits set forth therein for the following:

i. The air contaminant (for example, VOC or NO_x) on which the credits being generated or used are based; and

ii. Any HAP;

4. The data reports and summaries which set forth the data relied on in the calculations, together with adequate labeling and explanation of the data reports and summaries so as to enable proper interpretation; and

5. The following demonstrations:

i. If a generator or user would have actual emissions data available, but the protocol specifies that a generator or user shall use another method which does not utilize the actual emissions data, a demonstration that this other method results in a determination of emissions that is more representative, accurate, current, and reliable; and

ii. If the protocol specifies the use, for a stationary source, of a technique for measuring and quantifying actual emissions different from the techniques that would be selected for the source using the Department's "Hierarchies of Quantification Techniques" guidance document, a demonstration that this other technique is the most accurate and reliable technique available for measuring and quantifying actual emissions.

(c) A quantification protocol shall specify the data and other records relevant to documenting the quantification performed pursuant to N.J.A.C. 7:27–30.22(a) and (b) that, at a minimum, a generator or user shall retain. Such records will include, but not be limited to, the following data sets, where summary data reports are provided in the Notice of Generation, Notice of Intent to Use, or the Notice of Use:

1. Any emissions data relied on in the calculations described in (a) and (b) above;

2. For a stationary or mobile source, the data relied on to establish a generator source's or user source's activity level and hours of operation; and

3. For a product, the data collected to determine the quantity of product distributed, stored, or used in New Jersey; and

4. For a generation protocol, the data collected to establish the generator source's economic output.

(d) A quantification protocol shall provide example calculations, based on the formulas and the requirements for calculation at N.J.A.C. 7:27–30.5 or 30.13.

New Rule, R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).

7:27–30.26 (Reserved)

7:27–30.27 Interface with other trading programs

(a) Allowances allocated under the NO_x Budget Program may be converted to NO_x credits, in accordance with N.J.A.C. 7:27–31.6(a).

(b) Emission reduction credits generated under the Emission Offset Program may be converted to NO_x or VOC credits, in accordance with N.J.A.C. 7:27–18.11.

(c) Use of DER credits that are based on the conversion of NO_x Budget allowances or emission reduction credits generated under the Emission Offset Program is subject to the geographic constraints set forth at N.J.A.C. 7:27–30.21 rather than to any corresponding geographic requirements in NO_x Budget Program or the Emission Offset Program.

New Rule, R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).

7:27–30.28 Compliance responsibilities

The generator is responsible for ensuring that it has generated DER credits in accordance with this subchapter. The verifier is responsible for making the Notice of Verification true, accurate and complete. The user is responsible for ensuring that its use of DERs complies with this subchapter. In any enforcement action, the generator, verifier and user bear the burden of proof on each of their respective responsibilities.

Recodified from N.J.A.C. 7:27–30.21 and amended by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Substituted a reference to DER credits for a reference to DERs and deleted ", and that the DERs are real, surplus, and properly quantified" at the end of the first sentence, and substituted a reference to the Notice of Verification for a reference to the Notice of DER Verification in the second sentence.

7:27–30.29 Invalidation and cancellation of DER credits

(a) If the Department or the EPA determines at any time that a DER credit does not satisfy all of the applicable requirements of this subchapter, the Department or the EPA may find the credit invalid. The Department or the EPA shall effect such a finding by notifying the registry and the holder of the DER credit that the DER credit is invalid.

(b) If a generator decides, for any reason, to reduce the number of credits claimed for a batch, the generator shall, pursuant to N.J.A.C. 7:27–30.20, submit an amendment to a Notice of Generation requesting that a specified number of credits in the batch be canceled.

(c) Within one business day of receiving a notice that one or more DER credits are invalid, and within one business day of receiving an amendment requesting that one or more DER credits be canceled, the registry operator shall designate in the registry, by serial number, each DER credit that is invalid or canceled. If a part of a batch of DER credits has been found invalid or been canceled, the registry operator shall designate those credits in the batch with the higher serial numbers as being invalid or canceled.

(d) A generator, holder, or user of a DER credit, who is aggrieved with respect to a finding by the Department that a credit is invalid, may request an adjudicatory hearing, pursuant to N.J.A.C. 7:27–1.32.

(e) No credit which has been designated as invalid or as canceled may be transferred, verified, retired, or used.

New Rule, R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).

7:27–30.30 Penalties

A person who fails to comply with any provision of this subchapter shall be subject to civil administrative penalties in accordance with N.J.A.C. 7:27A–3 and applicable criminal penalties including, but not limited to, those set forth at N.J.S.A. 2C:28 and N.J.S.A. 26:2C–19(f)1 and 2. If there is more than one owner or operator of an emissions source, all owners and operators are jointly and severally liable for such civil administrative penalties.

Recodified from N.J.A.C. 7:27–30.22 by R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).

APPENDIX A

Global Warming Potentials[1]
(100 year time horizon)

Gas	Global Warming Potential
Carbon dioxide (CO_2)	1
Methane (CH_4)	21
Nitrous oxide (N_2O)	310
HFC–23	11,700
HFC–125	2,800
HFC–134a	1,300
HFC–143a	3,800
HFC–152a	140
HFC–227ea	2,900
HFC–236fa	6,300
HFC–4310mee	1,300
CF_4	6,500
C_2F_6	9,200
C_4F_{10}	7,000
C_6F_{14}	7,400
SF_6	23,900

[1]Source: Climate Change 1995: The Science of Climate Change, Report prepared for IPCC by Working Group 1, Intergovernmental Panel on Climate Change, Organization for Economic Co Operation and Development, Paris, France.

Repeal and New Rule, R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).
Appendix was "Emissions Included in Emissions Inventory as of August 2, 1996".

APPENDIX B

Note: The material below has been excerpted from the "Timely and Appropriate (T & A) Enforcement Response to High Priority Violations (HPVs)" guidance document signed by Eric Schaeffer, Director of the Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, United States Department of Environmental Protection, on December 22, 1998. A copy of the complete guidance document may be found on the EPA website at www.epa.gov/oeca/ore/aed or be requested from:

Air & Environmental Quality Compliance and Enforcement
Department of Environmental Protection
PO Box 422
401 East State Street, Floor 4
Trenton, NJ 08625–0422

II. Definition of High Priority Violations

When a violation is detected, the violation's characteristics shall be compared with the Definition of High Priority Violation given in Parts A and B below. To the extent that the violation fits one or more of the elements of the General High Priority Violation Criteria given in Part A or the High Priority Violation Matrix given in Part B, it shall be designated as a high priority violation and is subject to the Timely and Appropriate Section of this policy.

A. General HPV Criteria

The following criteria trigger HPV status. The criteria apply to the pollutant(s) of concern at major sources, (i.e., pollutant for which source is major) except where the criterion itself indicates otherwise (e.g., applies to a synthetic minor source). The determination of what is substantive/substantial shall be part of a case-by-case analysis/discussion by the EPA and the delegated agency.

1. Failure to obtain a PSD permit (and/or to install BACT), an NSR permit (and/or to install LAER or obtain offsets) and/or a permit for a major modification of either.

2. Violation of an air toxics requirement (i.e., NESHAP, MACT) that either results in excess emissions or violates operating parameter restrictions.

3. Violation by a synthetic minor of an emission limit or permit condition that affects the source's PSD, NSR or Title V status (i.e., fails to comply with permit restrictions that limit the source's potential emissions below the appropriate thresholds; refers only to pollutants for which the source is a synthetic minor. It is not necessary for a source's actual emissions to exceed the NSR/PSD/Title V thresholds.)

4. Violation of any substantive term of any local, State or Federal order, consent decree or administrative order.

5. Substantial violation of the source's Title V certification obligations, e.g., failure to submit a certification.

6. Substantial violation of the source's obligation to submit a Title V permit application. (i.e., failure to submit a permit application within sixty (60) days of the applicable deadline)

7. Violations that involve testing, monitoring, recordkeeping or reporting that substantially interfere with enforcement or determining the source's compliance with applicable emission limits.

8. A violation of an allowable emission limit detected during a reference method stack test.

9. Clean Air Act (CAA) violations by chronic or recalcitrant* violators.

10. Substantial violation of Clean Air Act Section 112(r) requirements (for permitting authorities that are not implementing agencies under Section 112(r) program, limited to source's failure to submit Section 112(r) risk management plan).

*Chronic or recalcitrant violator refers to a source that may stay below the HPV threshold but continually violates requirements to the extent that it is mutually agreed by the Region and the delegated agency that the source should be bumped up into HPV status.

B. High Priority Violation Matrix

The matrix below contains specific criteria for assessing whether violations are high priority. The matrix is set out in six columns that identify: the violation, the means by which the violation was identified (method of detection), the applicable standard, the supplemental significance threshold, percentage in excess of the reference limit or standard and the time in excess of the reference limit or standard. A discussion of each of these elements of the matrix is set out below. Violations not on the High Priority Violation List may nonetheless be serious, but may not be initially subject to the provisions of this policy.

Violations and Method of Detection

The first column lists four types of violations addressed by the matrix. The second column identifies six methodologies for detecting the four types of violations listed in the first column. The following shows the four types of violations and the associated method(s) of detecting violations that are reflected in the first two columns of the matrix. Although the matrix provides specific detection methods for violations, nothing in this policy is intended to limit the agency in using other credible evidence to document a violation.

I. Violation of Allowable Emissions Limitations

A. Reference Method Stack Testing or

B. Coatings Analysis, Fuel Samples or Other Process Material Sampling

II. Violation of Parameter Emissions Limitations

A. Continuous/Periodic Parameter Monitoring

III. Violation of Applicable Standards (non-opacity)

A. Continuous Emissions Monitoring (where the CEM is certified under Federal performance specifications)

IV. Violation of Applicable Standards (opacity)

A. Continuous Opacity Monitoring or

B. Method 9 Visual Emissions Readings

Standards

This column identifies the standard(s) for which a violation is being assessed.

Supplemental Significance Threshold

This column provides a supplemental significance threshold (SST) that is to be considered along with the other matrix factors to determine high priority violations. The SST is intended only as a surrogate threshold against which a violation can be judged and obviates the situation that would occur if an emissions limitation was high enough that a less than 15% excursion of the applicable requirement would result in significant environmental impact. The SST is consistent with the level at which a source would be required to obtain a PSD permit for a major modification for the applicable criteria pollutant(s), expressed as an hourly emission rate. The use of an SST is not intended in and of itself to imply that a facility must obtain a PSD permit.

Percent in Excess of Limit/Parameter

This column is the yardstick by which a violation is judged to be a high priority violation. In some cases (i.e., where the word "FOR" connects this column with the last column), the percent in excess of the limit is paired with a time element. To determine the level of excess emissions for which a violation is considered high priority, multiply the applicable standard by the applicable percentage from this column.

Percent of Time in Excess of the Applicable Standard

The percent of time in excess of the applicable standard is based on the operating time of the facility during the reporting period in which the violation was discovered.

Violation	Method of Detection	Standard	Supplemental Significant Threshold[1]	% in Excess of Reference Limit/Parameter		% of Time in Excess of Reference Limit
Violation of Allowable Emissions Limitations	Stack Testing	Any applicable requirement		Any violation of the applicable standard		N/A
	Coatings analysis, fuel samples, other process materials sampling of raw/process materials usage reports	Any applicable requirement	CO 23 lb/hr NO_x 9 lb/hr SO2 9 lb/hr VOC 9 lb/hr PM 6 lb/hr PM10 3 lb/hr	>15% of the applicable emission limitations or the supplemental significant threshold (whichever is more stringent)		N/A
Violation of parameter limits where the parameter is a direct surrogate for an emissions limitation	Continuous/Periodic Parameter Monitoring (includes indicators of control device performance)	Any applicable requirement		>5% of the applicable parameter limit	FOR	> 3% of the operating time during the reporting period
					OR	any exceedance of the parameter limit for > 50% of the operating time during the reporting period[3]
Violation of applicable non-opacity standard	Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)	≤ 24 hour averaging period (for example, one hour or three hour blocks)	CO 23 lb/hr NO_x 9 lb/hr SO2 9 lb/hr VOC 9 lb/hr	15% of the applicable standard or, the supplemental significant threshold (whichever is more stringent)	FOR	> 5% of the operating time during the reporting period[4,6]
					OR	any exceedance of the reference limit for > 50% of the operating time during the reporting period[3]
	Continuous Emissions Monitoring (where the CEM is certified under federal performance specifications)	> 24 hour averaging period		Any violation of the applicable standard		N/A
Violation of applicable opacity standard[2]	Continuous Opacity Monitoring	0-20% opacity > 20% opacity		> 5% opacity over the limit > 10% opacity over the limit	FOR	> 5 % of the operating time during the reporting period[4,6]
	Method 9 VE Readings	0-20% opacity > 20% opacity		> 50% over limit > 25% over limit	AND	Any violation of SIP/NSPS limits[5]

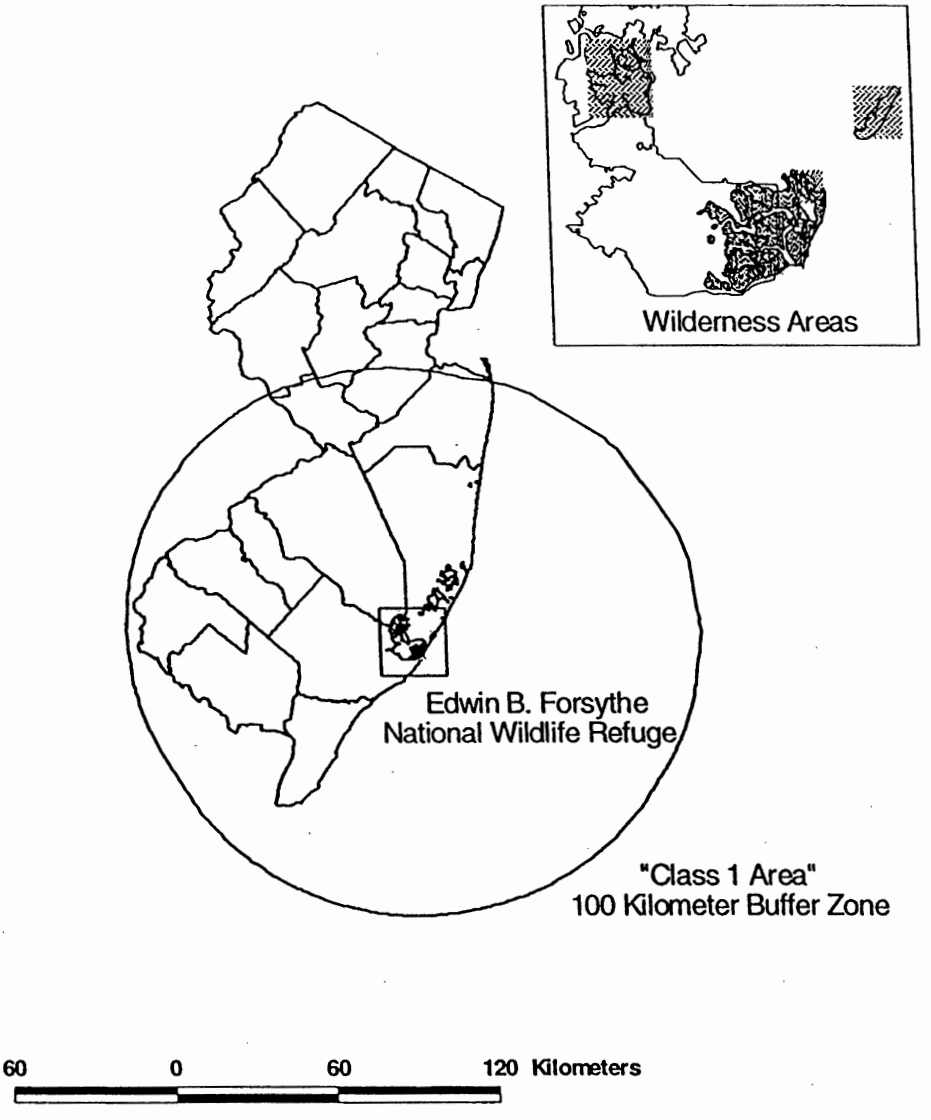
Table Footnotes:

1. Supplemental Significant Threshold is based on PSD significant levels. The significant threshold value is the lb/hr emission rate at 8760 hours which would result in PSD review.
2. Based on the applicable averaging period (e.g. 6-minute block averages).
3. For the first reporting period. If exceedances occur for more than 25% of the operating time during the first reporting period evaluated, and if such exceedances continue during the subsequent consecutive reporting period, the exceedances will be considered high priority violations for both reporting periods if the percent of time in excess exceeds 25% of the operating time during the second reporting period.
4. For the first reporting period. If exceedances occur for more than 3% of the operating time during the first reporting period evaluated, and if such exceedances continue during the subsequent consecutive reporting period, the exceedances will be considered high priority violations for both reporting periods if the percent of time in excess exceeds 3% of the operating time during the second reporting period.
5. Unless the state or local agency concludes that 1) the cause of the violation has been corrected within 30 days and the source has returned to compliance, or 2) the source was in compliance with an applicable mass limit at the time the Method 9 visual reading was taken.
6. This would not include any federally approved exempt period (e.g., startup/shutdown/malfunction 40 CFR 60.11), since these would not be violations.

New Rule, R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).

APPENDIX C

Map indicating 100 Kilometer Buffer Zone Surrounding Edwin B. Forsythe National Wildlife Refuge



New Rule, R.2000 d.204, effective May 15, 2000 (operative June 6, 2000).
See: 31 N.J.R. 1671(a), 32 N.J.R. 1808(a).

SUBCHAPTER 31. NO_X BUDGET PROGRAM

Authority

N.J.S.A. 13:1B–3 and 26:2C–1 et seq.

Source and Effective Date

R.1998 d.379, effective July 20, 1998 (operative August 16, 1998).
See: 29 N.J.R. 3924(b), 29 N.J.R. 4226(a), 30 N.J.R. 2660(a).

7:27–31.1 Purpose and scope

This subchapter establishes a NO_x Budget Program in New Jersey which, beginning in 1999, limits emissions from stationary sources of NO_x. It sets forth requirements for the monitoring, recordkeeping, and reporting of NO_x emissions and for certification of compliance with this program. It makes available a trading mechanism, which allows intrastate trading as well as interstate trading. In order to support the trading mechanism, this subchapter establishes rules and procedures for the allocation of the tradeable units (that is, allowances); the transfer, use, and retirement of the allowances; and the tracking of the allowances.

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:

"AAR" means authorized account representative.

"Account" means the place in the NO_x Allowance Tracking System where allowances are held for a specific person or purpose. Such a place may be a compliance account, a general account, or a retirement account.

"Account number" means the identification number given by the NATS Administrator to an account in which allowances are held in the NO_x Allowance Tracking System pursuant to N.J.A.C. 7:27–31.13, NO_x Allowance Tracking System.

"Acquiring account" means the account in an allowance transfer to which allowances are conveyed.

"Allocate" or "allocation" means:

1. In respect to New Jersey, the assignment of allowances pursuant to N.J.A.C. 7:27–31.7, Annual allowance allocation; or in respect to another jurisdiction, the assignment of allowances pursuant to that jurisdiction's comparable rules; and

2. The recording of the assigned allowances by the NATS Administrator in the appropriate NO_x Allowance Tracking System compliance account or general account.

"Allowance" means a tradeable unit which represents the limited authorization to emit one ton of NO_x during a control period.

"Allowance deduction" means the withdrawal by the NATS Administrator of one or more allowances from a NO_x Allowance Tracking System general account or compliance account and the recording of such allowances in a retirement account. As prescribed in the procedures at N.J.A.C. 7:27–31.17 and 31.19, allowance deduction events relating to end-of-season reconciliation and penalty deductions may only be made from compliance accounts. As prescribed at N.J.A.C. 7:27–31.10, allowance deduction events relating to voluntary retirement may be made from a compliance account or a general account.

"Allowance transfer" means the withdrawal by the NATS Administrator of one or more allowances from a NO_x Allowance Tracking System general account or compliance account and the recording of such allowances in a different general account or compliance account.

"Allowance transfer deadline" means midnight of December 31 of a given calendar year, and is the deadline by which an allowance transfer request may be submitted to the NATS Administrator to effect an allowance transfer for the purpose of meeting the requirement of N.J.A.C. 7:27–31.3(i) for the year's control period.

"Alternative monitoring system" means a monitoring system other than a CEMS, or component of such a system, that is designed to determine mass emissions per time period, air contaminant concentrations, or volumetric flow of a given source or group of sources, as provided for in N.J.A.C. 7:27–31.14, Emissions monitoring.

"Authorized account representative (AAR)" means the responsible individual designated in writing by the person who holds an account. This individual (or his or her alternate) is the sole person who has the authority, on behalf of the account, to submit allowance transfer requests to the NATS Administrator, and to as certify and submit reports to the NATS and the NETS.

"Banked allowance" means an allowance in a general account or a compliance account which has been neither used to reconcile emissions in the year it was originally allocated nor retired, and which is therefore carried forward in the account into the next year or into successive future years. The NATS Administrator shall flag such an allowance as "banked."

"Base budget" or "base emission budget" means the emissions budget for each control period that has been developed by applying the emission limits, jointly agreed to by the jurisdictions who are signatories of the OTC MOU, to the baseline sources' baseline emissions. This term when used in respect to:

1. A specific OTR jurisdiction, is the emission budget so established for that jurisdiction; and

2. The OTR as a whole, is the sum of the emission budgets so established for all jurisdictions in the region.

"Banking" means the retention in a general account or a compliance account of one or more allowances that were allocated for use in the current or in a previous control period, but have been neither used nor retired. Such

allowances may be used or retired in a future control period.

"Baseline" means, when used in reference to the emissions or productivity of a source, one of the following:

1. For an opt-in source, the average emissions or average productivity of that source during the two consecutive May 1 through September 30 periods on which the increase in the New Jersey emission budget made to accommodate the source was based, pursuant to N.J.A.C. 7:27–31.4; or

2. For a baseline source, the emissions or productivity attributed to that source in the 1990 baseline NO_x emission inventory.

"Baseline NO_x emission inventory" means the emissions inventory which developed jointly by all jurisdictions in the OTR and which sets forth, for all baseline sources, the NO_x emissions of these sources for the period May 1 and September 30, 1990. This inventory is the emission baseline from which emission reductions are calculated for purposes of determining the effectiveness of the NO_x Budget Program in limiting NO_x emissions.

"Baseline source" means a source which is one of the following and which operated during the May 1 through September 30 period in 1990:

1. A fossil fuel fired boiler or indirect heat exchanger with a maximum rated heat input capacity of at least 250 MMBtu per hour;

2. An electric generating unit with a rated output of at least 15 MW.

"Boiler" means an indirect heat exchanger which combusts fossil fuel to produce steam, or to heat water or any other heat transfer medium.

"British Thermal Unit" means the quantity of heat required to raise the temperature of one avoirdupois pound of water one degree Fahrenheit at 39.1 degrees Fahrenheit.

"Btu" means British Thermal Unit.

"Budget source" means any of the following sources located in the OTR:

1. A fossil fuel fired indirect heat exchanger with a maximum rated heat input capacity of at least 250 MMBtu per hour;

2. An electric generating unit with a rated output of at least 15 MW; or

3. Any source that has been approved as an opt-in source.

"CEMS" means continuous emission monitoring system.

"Clean Air Act" means the Federal Clean Air Act as amended in 1990 (42 U.S.C. §§ 7401 through 7626).