



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

January 12, 2010

The Honorable Naida L. Kaen, Chairman
House Science, Technology, and Energy Committee
Legislative Office Building, Room 304
Concord, NH 03301

Re: HB 1251 Relative to the Sale and Transfer Procedures for Shutdown Emissions Credits

Dear Chairman Kaen and Members of the Committee:

The Department of Environmental Services (DES) requested, and is pleased to testify in support of, House Bill 1251 which clarifies the sale and transfer procedures for emissions reduction credits (ERCs) resulting from facility closures/shutdowns. RSA 125-J established an ERC trading program to facilitate compliance with the requirements of the Clean Air Act. Under federal New Source Review (NSR) regulations, major new facilities are required to obtain emission offsets for Nitrogen Oxides (NO_x) emissions. NSR offsets are certified emission reductions from either existing or shutdown sources of emissions, such that net emissions do not increase when new major sources are constructed. NO_x offsets are normally in the form of ERCs. ERCs are generally created from the permanent shutdown of existing emission sources or permanent restrictions resulting in emission reductions from existing emission sources. As such, ERCs are generated on an ongoing annual basis, as a rate (e.g., tons per year).

Under RSA 125-J:5, VII, ERCs generated from the shutdown of emission units revert to the State. Pursuant to this provision, NH has generated a "bank" of 508 ERCs. This bank of offsets is reserved for use by the Governor and Executive Council in accordance with criteria established in the statute, primarily related to supporting economic development in the state. One consideration is to use this strategic bank of ERCs for projects needing offsets that promote job retention and economic development in New Hampshire. Another consideration is the market value of the ERCs. In addition, the statute (RSA 125-J:5, IX) envisions that proceeds from the sale of such ERCs be used for the acquisition and generation of additional ERCs to be available to support future economic development.

Due to the strategic value and unique asset that the existing state bank of ERCs provides for future economic development, continuing availability of ERCs should be maintained. Future availability of additional ERCs depends upon plant shut downs and the willingness of other states to agree to the use of their ERCs outside of their boundaries. The proposed amendments to RSA 125-J would clarify that companies that are assigned ERCs from the state bank would be required to, in order of priority, either:

- (1) Subsequently purchase ERCs on the open market and return them to the state in order to refill the bank; or

- (2) Reimburse the state for the value of the ERCs.

This provides companies with the necessary ERCs at no initial cost (which facilitates project financing), but also allows the state to maintain the bank for future economic development. Under the proposal, the ERCs would be returned to the bank within 18 months of commencement of operation of the new facility.

Since the time of DES' initial request and the drafting of the proposed legislation, we have received further input from our legal/compliance staff, resulting in revised recommended statutory language. DES requests that this revised language be substituted for the original language, in the form of an amendment to the bill as introduced.

Clarifying the sale and transfer procedures for shutdown ERCs will assist the Governor and Executive Council as they consider how the State's bank of ERCs should be used. It will benefit DES and regulated sources by providing certainty to the NSR offset acquisition process. It will also benefit the economy and the environment of New Hampshire by providing a cost effective means of offsetting emissions from new sources.

Thank you for the opportunity to provide testimony. Should you have further questions or need additional information please feel free to contact Robert R. Scott, Director, Air Resources Division (271-1088, robert.scott@des.nh.gov) or Michael Fitzgerald, Administrator (271-6390, michael.fitzgerald@des.nh.gov).

Sincerely,



Thomas S. Burack
Commissioner

cc: Sen. A. Merrill
Sen. J. Bradley