

ONTARIO REGULATION
made under the
ENVIRONMENTAL PROTECTION ACT

Amending O. Reg. 397/01

(Emissions Trading)

Note: Ontario Regulation 397/01 has previously been amended. Those amendments are listed in the Table of Regulations – Legislative History Overview which can be found at www.e-laws.gov.on.ca.

1. (1) The definitions of “combined nitric oxide facility”, “emission allowances”, “emission reduction credits” and “independent nitric oxide facility” in section 1 of Ontario Regulation 397/01 are revoked and the following substituted:

“combined nitric oxide facility” means a generation facility located in Atikokan, Bath, Courtright, Nanticoke or Thunder Bay that, immediately before April 1, 1999, was owned by Ontario Hydro or a subsidiary of Ontario Hydro, and, until April 30, 2005, includes the Lakeview Generation Facility and “combined nitrogen oxides facility” has the same meaning;

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“emission allowances” means nitric oxide emission allowances, nitrogen oxides emission allowances or sulphur dioxide emission allowances;

“emission reduction credits” means nitric oxide emission reduction credits, nitrogen oxides emission reduction credits or sulphur dioxide emission reduction credits;

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“independent nitric oxide facility” means a generation facility other than a combined nitric oxide facility and “independent nitrogen oxides facility” has the same meaning;

(2) The definition of “IMO controlled grid” in section 1 of the Regulation is revoked.

(3) Section 1 of the Regulations is amended by adding the following definition:

“nitrogen oxides emission reduction credits” means nitrogen oxides smog season emission reduction credits or nitrogen oxides non-smog season emission reduction credits;

(4) Section 1 of the Regulation is amended by adding the following subsection:

(2) The amount of nitrogen oxides are calculated for the purpose of this Regulation according to the following formula:

$$A = (B \times 1.53) + C$$

where,

A = the total amount of nitrogen oxides expressed as nitrogen dioxide,

B= the relevant amount of nitric oxide,

C = the relevant amount of nitrogen dioxide.

2. (1) Clauses 2 (15) (b) and (c) of the Regulation are revoked and the following substituted:

(b) the facility will not generate more than 20,000 megawatt hours of electricity in the following year; or

(c) the quotient determined by dividing the amount of nitrogen oxides that will be emitted from the facility in the following year by the amount of electricity that will be generated by the facility in the following year will not be more than .015 kilograms per megawatt hour.

(2) Clause 2 (16) (b) of the Regulation is amended by striking out “that will be conveyed into the IMO grid or sold.”

3. Section 7 of the Regulation is revoked and the following substituted:

DISTRIBUTION OF NITRIC OXIDE AND NITROGEN OXIDES EMISSION ALLOWANCES

Combined nitric oxide and nitrogen oxide facilities: 2002 to 2006

7. (1) On January 1 of each year from 2002 to 2005, Ontario Power Generation Inc. shall be deemed to have acquired nitric oxide emission allowances in respect of the combined nitric oxide facilities in the amount set out in the following Table for that year:

Year	Amount of Nitric Oxide Emission Allowances (kilotonnes)
2002	35.0
2003	35.0
2004	25.0
2005	22.4

(2) On January 1 of 2006, Ontario Power Generation Inc. shall be deemed to have acquired 32.3 kilotonnes of nitrogen oxides emission allowances in respect of the combined nitrogen oxides facilities.

4. (1) Subsection 8 (1) of the Regulation is amended by striking out “2004, or 2005 or 2006” and substituting “2004 or 2005”.

(2) Section 8 of the Regulation is amended by adding the following subsection:

(1.1) The owner of an independent nitrogen oxides facility may apply to the Director for nitrogen oxides emission allowances for 2006 in respect of the facility.

(3) Subsections 8 (5) and (6) of the Regulation are revoked and the following substituted:

(5) The Director shall determine the following amount for each facility for which an application for nitric oxide emission allowances or for nitrogen oxides emission allowances is made in accordance with this section:

$$(A \div B) \times C$$

where,

A = the deemed electricity production of the facility, determined in accordance with section 2,

B = the total deemed electricity production of all the facilities for which applications were made in accordance with this section, determined in accordance with section 2,

C = the amount set out in the following Table for the year for which the emission allowances are applied for:

Year	Total Nitric Oxide and Nitrogen
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	Oxides Emission Allowances (kilotonnes)
2004	10.0 nitric oxide
2005	12.6 nitric oxide
2006	21.3 nitrogen oxides

(6) If an application for nitric oxide emission allowances or nitrogen oxides emission allowances is made in accordance with this section in respect of a facility,

- (a) the Director shall send written notice of the amount determined for the facility under subsection (5) to the owner of the facility and to the operator of the Registry not later than October 1 in the year preceding the year for which the emission allowances are applied for; and
- (b) on January 1 of the year for which the emission allowances are applied for, the owner of the facility shall be deemed to have acquired nitric oxide emission allowances or nitrogen oxides emission allowances, as the case may be, in respect of the facility in the amount determined for the facility under subsection (5).

5. Section 9 of the Regulation is revoked and the following substituted:

Combined nitrogen oxides facilities: 2007

9. (1) On January 1, 2007, Ontario Power Generation Inc. shall be deemed to have acquired 23.7 kilotonnes of nitrogen oxides emission allowances in respect of the combined nitrogen oxides facilities that are located in the Pollution Emission Management Area.

(2) On January 1, 2007, Ontario Power Generation Inc. shall be deemed to have acquired 2.3 kilotonnes of nitrogen oxides emission allowances in respect of the combined nitrogen oxides facilities that are not located in the Pollution Emission Management Area.

6. (1) Subsection 10 (1) of the Regulation is struck out and the following substituted:

Independent nitrogen oxides facilities: 2007

10. (1) The owner of an independent nitrogen oxides facility may apply to the Director for nitrogen oxides emission allowances for 2007 in respect of the facility.

(2) Subsection 10 (4) of the Regulation is amended,

- (a) **by striking out “nitric oxide” in the portion before the equation and substituting “nitrogen oxides”; and**
- (b) **by striking out “10.0” in the equation and substituting “15.3”.**

(3) Subsection 10 (5) of the Regulation is amended,

- (a) by striking out “9.1” in the portion before clause (a) and substituting “13.9”; and
- (b) by striking out “nitric oxide” in clause (b) and substituting “nitrogen oxides”.

(4) Subsection 10 (6) of the Regulation is amended,

- (a) by striking out “9.1” in the portion before clause (a) and substituting “13.9”; and
- (b) by striking out “nitric oxide” in clause (c) and substituting “nitrogen oxides”.

(5) Subsection 10 (7) of the Regulation is amended by striking out “9.1” in the equation and substituting “13.9”.

(6) Subsection 10 (8) of the Regulation is amended by striking out “0.9” in the equation and substituting “1.4”.

7. (1) Subsection 11 (1) of the Regulation is revoked and the following substituted:

Nitrogen oxides allowances for 2008 and later years

11. (1) The owner of a generation facility may apply to the Director for nitrogen oxides emission allowances for 2008 or a later year in respect of the facility

(2) Subsection 11 (4) of the Regulation is amended,

- (a) by striking out “nitric oxide” in the portion before the equation and substituting “nitrogen oxides”; and
- (b) by striking out “27.0” in the equation and substituting “41.3”.

(3) Subsection 11 (5) of the Regulation is amended,

- (a) by striking out “24.6” in the portion before clause (a) and substituting “37.6”;
and
- (b) by striking out “nitric oxide” in clause (b) and substituting “nitrogen oxides”.

(4) Subsection 11 (6) of the Regulation is amended,

- (a) by striking out “24.6” in the portion before clause (a) and substituting “37.6”;
and
- (b) by striking out “nitric oxide” in clause (c) and substituting “nitrogen oxides”.

(5) Subsection 11 (7) of the Regulation is amended by striking out “24.6” in the equation and substituting “37.6”.

(6) Subsection 11 (8) of the Regulation is amended by striking out “2.4” in the equation and substituting “3.7”.

8 (1) Subsection 12 (1) of the Regulation is revoked and the following substituted:

Nitrogen oxides allowances for renewable energy and conservation projects

12. (1) A person may apply to the Director for nitrogen oxides emission allowances in connection with a renewable energy project or conservation project.

(2) Subsection 12 (4) of the Regulation is amended by striking out “nitric oxide” and substituting “nitrogen oxides”.

(3) Subsection 12 (5) of the Regulation is revoked and the following substituted:

(5) The total amount of nitrogen oxides emission allowances that may be awarded by the Director under subsection (4) in a year must not exceed 1.5 kilotonnes.

(4) Subsection 12 (6) of the Regulation is revoked and the following substituted:

(6) If the total amount of nitrogen oxides emission allowances that would be awarded by the Director under subsection (4) in a year, determined in accordance with the Ontario Emissions Trading Code, would exceed 1.5 kilotonnes, the Director shall instead award each successful applicant with an amount of nitrogen oxides emission allowances determined in accordance with the following formula:

$$(A \div B) \times 1.5 \text{ kilotonnes}$$

where,

A = the amount of nitrogen oxides emission allowances that would have been awarded to the successful applicant if that amount had been determined in accordance with the Ontario Emissions Trading Code,

B = the total amount of nitrogen oxides emission allowances that would have been awarded to all successful applicants if that amount had been determined in accordance with the Ontario Emissions Trading Code.

(5) Subsection 12 (7) of the Regulation is amended,

(a) by striking out “nitric oxide” in the portion before clause (a) and substituting “nitrogen oxides”; and

(b) by striking out “nitric oxide” in clause (b) and substituting “nitrogen oxides”.

(6) Subsection 12 (8) of the Regulation is amended by striking out “from 2002 to 2006” and substituting “from 2002 to 2005”.

(7) Section 12 of the Regulation is amended by adding the following subsection:

(8.1) If in 2006 no nitrogen oxides emission allowances are awarded by the Director under subsection (6) and the total amount of nitrogen oxides emission allowances awarded by the Director under subsection (4) is less than 1.5 kilotonnes, Ontario Power Generation Inc. shall be deemed, on December 1, 2006, to have acquired nitrogen oxides emission allowances in respect of the combined nitrogen oxides facilities in an amount equal to 1.5 kilotonnes less the total amount of nitrogen oxides emission allowances awarded by the Director under subsection (4).

(8) Subsection 12 (9) of the Regulation is revoked and the following substituted:

(9) If, in 2007, no nitrogen oxides emission allowances are awarded by the Director under subsection (6) and the total amount of nitrogen oxides emission allowances awarded by the Director under subsection (4) is less than 1.5 kilotonnes,

(a) Ontario Power Generation Inc. shall be deemed, on December 1, 2007, to have acquired nitrogen oxides emission allowances in respect of the combined nitrogen oxides facilities located in the Pollution Emission Management Area in an amount equal to 1.5 kilotonnes less the total amount of nitrogen oxides emission allowances awarded by the Director under subsection (4), multiplied by 0.91; and

(b) Ontario Power Generation Inc. shall be deemed, on December 1, 2007, to have acquired nitrogen oxides emission allowances in respect of the combined nitrogen oxides facilities that are not located in the Pollution Emission Management Area in an amount equal to 1.5 kilotonnes less the total amount of nitrogen oxides emission allowances awarded by the Director under subsection (4), multiplied by 0.09.

(9) Subsection 12 (10) of the Regulation is revoked and the following substituted:

(10) If, in 2008 or a later year, no nitrogen oxides emission allowances are awarded by the Director under subsection (6) and the total amount of nitrogen oxides emission allowances awarded by the Director under subsection (4) is less than 1.5 kilotonnes, each person who acquired nitrogen oxides emission allowances in respect of a generation facility on January 1 of the year under section 11 shall be deemed, on December 1 of the year, to have acquired nitrogen

oxides emission allowances in respect of the facility in an amount determined in accordance with the following formula:

$$(A \div 41.3 \text{ kilotonnes}) \times (1.5 \text{ kilotonnes} - B)$$

where,

- A = the amount of nitrogen oxides emission allowances acquired in respect of the facility on January 1 of the year under section 11,
- B = the total amount of nitrogen oxides emission allowances awarded by the Director under subsection (4).

9. Subsection 18 (3) of the Regulation is revoked and the following substituted:

(3) Despite subsection (2), emission reduction credits may be created as a result of an emission reduction project undertaken outside the areas referred to in subsection (2) if the Director is satisfied that reductions of nitric oxide emissions, nitrogen oxides emissions or sulphur dioxide emissions, as the case may be, achieved by the project have a measurable effect in Ontario.

10. Section 20 of the Regulation is revoked and the following substituted:

OBLIGATION TO BALANCE EMISSIONS WITH ALLOWANCES AND CREDITS

Nitric oxide and nitrogen oxides

20. (1) This section applies to a generation facility for a year if,

- (a) nitric oxide emission allowances or nitrogen oxides emission allowances were acquired by any person in respect of the facility on January 1 of the previous year under section 7, 8, 9, 10 or 11; or
- (b) in respect of 2005 and later years,
 - (i) the facility had a name plate capacity of more than 25 megawatts at any time in the previous year,
 - (ii) the facility generated more than 20,000 megawatt hours of electricity in the previous year,
 - (iii) the quotient determined by dividing the amount of nitric oxide emitted from the facility in the previous year by the amount of electricity generated by the facility in the previous year is greater than 0.01 kilograms per megawatt hour, if the previous year is 2004 or 2005, and

- (iv) the quotient determined by dividing the amount of nitrogen oxides emitted from the facility in the previous year by the amount of electricity generated by the facility in the previous year is greater than 0.015 kilograms per megawatt hour, if the previous year is 2006 or a subsequent year;

(2) Not later than March 31 in each year after 2002, the owner of a facility to which this section applies for the year shall apply to the Director for approval to retire nitric oxide emission allowances or nitrogen oxides emission allowances for the purpose of subsection (4).

(3) An application under subsection (2) may also include an application for approval to retire nitric oxide emission reduction credits or nitrogen oxides reduction credits for the purpose of subsection (4).

(4) For each year after 2002, the owner of a facility to which this section applies shall, not later than June 1 of the year, ensure that the following statement is true:

$$A + (B \times 0.9) \geq C$$

where,

A = the total amount of nitric oxide emission allowances and nitrogen oxides emission allowances that are retired for the purpose of this subsection with the approval of the Director,

B = the total amount of nitric oxide emission reduction credits and nitrogen oxides emission reduction credits that are retired for the purpose of this subsection with the approval of the Director,

C = (i) if the previous year is 2002, 2003, 2004 or 2005, the amount of nitric oxide emitted from the facility in the previous year, or

(ii) if the previous year is 2006 or a subsequent year, the amount of nitrogen oxides emitted from the facility in the previous year.

(5) For the purpose of subsection (4),

- (a) a nitric oxide emission allowance is equivalent to 1.53 of a nitrogen oxides emission allowance; and

- (b) a nitric oxide emission reduction credit is equivalent to 1.53 of a nitrogen oxide emission reduction credit.

11. Subclause 21 (1) (b) (ii) of the Regulation is amended by striking out “that were conveyed to the IMO grid or sold”.

12. Subsection 26 (1) of the Regulation is revoked and the following substituted:

LIMITS ON RETIREMENT OF EMISSION REDUCTION CREDITS

Ratio of credits to allowances limits

26. (1) The owner of a facility may not retire an amount of nitric oxide emission reduction credits and nitrogen oxides emission reduction credits in a year for the purpose of subsection 20 (4) unless the following statement is true:

$$(A - B) \times 0.9 \leq C \times 0.33$$

where,

- A = the total amount of nitric oxide emission reduction credits and nitrogen oxides emission reduction credits that are retired in the year for the purpose of subsection 20 (4),
- B = (i) if the previous year is 2002, 2003, 2004 or 2005, the amount of nitric oxide emitted from the facility in the previous year because of reliability must run contracts as defined in the market rules or directions given by the IMO under the authority of the market rules, or
- (ii) if the previous year is 2006 or later, the amount of nitrogen oxides emitted from the facility in the previous year because of reliability must run contracts as defined in the market rules or directions given by the IMO under the authority of the market rules,
- C = the total amount of nitric oxide emission allowances and nitrogen oxides emission allowances that are retired in the year for the purpose of subsection 20 (4).

13. Section 27 of the Regulation is revoked and the following substituted:

Limit on nitric oxide and nitrogen oxides non-smog season credits

27. The owner of a facility may retire nitric oxide non-smog season emission reduction credits and nitrogen oxides non-smog season emission reduction credits for a year for the purpose of subsection 20 (4) only if the following statement is true:

$$(A \div B) \leq (C \div D)$$

where,

- A = the amount of nitric oxide or nitrogen oxides, as the case may be, emitted from the facility in the smog season in the year,
- B = the amount of nitric oxide or nitrogen oxides, as the case may be, emitted from the facility in the year, other than nitric oxide emitted in the smog season,
- C = the total amount of nitric oxide smog season emission reduction credits or nitrogen oxides smog season emission reduction credits, as the case may be, retired by the owner for the year for the purpose of subsection 20 (4),
- D = the total amount of nitric oxide non-smog season emission reduction credits or nitrogen oxides non-smog season emission reduction credits, as the case may be, retired by the owner for the year for the purpose of subsection 20 (4).

14. (1) Clause 28 (1) (a) of the Regulation is revoked and the following substituted:

- (a) nitric oxide emission allowances or nitrogen oxides emission allowances will be acquired by any person in respect of the facility on January 1 of the year under section 7, 8, 9, 10 or 11; or

(2) Subsection 28 (2) of the Regulation is amended by striking out the portion before clause (a) and substituting the following:

(2) The owner of a facility to which this section applies for a year during the period 2002 to 2005 shall ensure that emissions of nitric oxide from the facility are monitored during the year in accordance with,

(3) Section 28 of the Regulation is amended by adding the following subsection:

(2.1) The owner of a facility to which this section applies for a year after 2005 shall ensure that emissions of nitrogen oxides from the facility are monitored during the year in accordance with,

- (a) a continuous emissions monitoring system installed and operated in accordance with the Ministry of the Environment publication entitled “Guideline for the Installation and Operation of Continuous Emission Monitoring Systems (CEMs) and their Use for Reporting under the Provisions of Regulation O. Reg. 127/01”, dated April 2001, as amended from time to time; or

- (b) a method that, in the opinion of the Director, will provide estimates of nitrogen oxides emissions at least as accurate as the estimates that would be provided by a continuous emission monitoring system referred to in clause (a).

(4) Subsection 28 (5) of the Regulation is revoked and the following substituted:

(5) The owner of a facility to which this section applies for a year shall, not later than March 31 in the following year, submit a report to the Director stating,

- (a) the amount of nitric oxide or nitrogen oxides, as the case may be, emitted from the facility in the smog season in the year;
- (b) the amount of nitric oxide or nitrogen oxides, as the case may be, emitted from the facility in the year, other than nitric oxide or nitrogen oxides emitted during the smog season; and
- (c) the amount of nitric oxide or nitrogen oxides, as the case may be, emitted from the facility in the year because of reliability must run contracts as defined in the market rules or directions given by the IMO under the authority of the market rules.

15. Clause 30 (b) of the Regulation is amended by striking out “that was conveyed into the IMO controlled grid or sold”.

16. Section 33 of the Regulation is amended,

- (a) by striking out “nitric oxide or sulphur dioxide” in the portion before the equation and substituting “nitric oxide, nitrogen oxides or sulphur dioxide”;
- (b) by striking out “nitric oxide or sulphur dioxide” in the definition of C and substituting “nitric oxide, nitrogen oxides or sulphur dioxide”.

17. Subsection 34 (2) of the Regulation is amended by striking out “nitric oxide or sulphur dioxide” and substituting “nitric oxide, nitrogen oxides or sulphur dioxide”.