

Hunter River Salinity Trading Scheme credit exchange facility

Terms and Conditions

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Published by:

NSW Environment Protection Authority
4 Parramatta Square, 12 Darcy Street, Parramatta NSW 2150
Locked Bag 5022, Parramatta NSW 2124
Phone: +61 2 9995 5000 (switchboard)
Phone: 131 555 (NSW only – environment information and publications requests)
Fax: +61 2 9995 5999
TTY users: phone 133 677, then ask for 131 555
Speak and listen users: phone 1300 555 727, then ask for 131 555
Email: info@epa.nsw.gov.au
Website: www.epa.nsw.gov.au

Report pollution and environmental incidents

Environment Line: 131 555 (NSW only) or info@epa.nsw.gov.au

See also www.epa.nsw.gov.au

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On submitting their 'Application for membership – credit exchange facility' form, Hunter River Salinity Trading Scheme participants agreed to abide by the Terms and Conditions set out in this document. Scheme participants who are registered by the EPA to use the credit exchange facility are referred to in this document as members.

These Terms and Conditions apply to members and to anyone accessing the credit exchange facility on behalf of a member. Please read them carefully.

General

1. Name of website

The website <http://www.epa.nsw.gov.au/HRSTSApp/Default.aspx> and all information on it is referred to as the credit exchange facility.

2. Comply with Scheme rules

Members are required to comply with the rules, laws and licence conditions applicable from time to time to the Scheme ('the Scheme rules').

Registration

3. Members and facilities

A Member is the party responsible for a licensed facility that participates in the Scheme. For example, a Member is ACME Pty Ltd and the facility is ACME coal mine.

4. Members and their representatives

- a. Members must ensure that only appropriate persons become representatives.
- b. A representative is a person nominated on the 'Application for membership – credit exchange facility' form or any person subsequently established as a representative in accordance with these Terms and Conditions.
- c. If the EPA approves a member's 'Application for Membership – credit exchange facility', the person nominated as the member's representative on that form will be classified as having a user type of manager. Representatives who are classified as managers are authorised to access the administration component of the credit exchange facility in order to establish accounts for other representatives to act on behalf of the member by generating a new username. New passwords can only be generated by the EPA. A representative who is a manager may also delete their own account (for example if they have arranged for a new representative to replace them).
- d. New representatives (whose accounts are set up by a manager) may be provided with either manager access or general user access. Representatives with general user access can view the noticeboard, view, create and accept offers, but are not provided with any system administration access to edit representative details or provide access to the system for new representatives.
- e. Members must ensure that all representatives:
 - i. Are authorised to act on behalf of the member
 - ii. understand and comply with the Scheme rules and these Terms and Conditions, and
 - iii. understand how to use the credit exchange facility.
- f. Representatives may, subject to the Scheme rules and these Terms and Conditions, conduct credit transfers on behalf of the member with respect to the relevant facility. Actions performed by representatives are taken to have been duly authorised by the relevant member.

5. Member termination

Facilities that discharge saline water to the Hunter River (including via a tributary) are required to discharge in accordance with the Protection of the Environment Operations (Hunter River Salinity Trading Scheme) Regulation 2002 (the Regulation).

Where:

- a. a facility is not required to participate in the Scheme and the member no longer wishes the facility to participate in the Scheme (for example, a member may decide that it no longer wants to hold credits with respect to a non-discharging mine), and/or
- b. a licence is surrendered in accordance with s80 of the *Protection of the Environment Operations Act 1997*,

the Member may request the EPA, in writing, to remove the member, facility and representative details from the credit exchange facility.

6. The EPA may suspend or terminate access to the credit exchange facility

Where an environment protection licence relating to a facility in the Scheme has been suspended or revoked, the EPA may

- a. in the case of a suspension, suspend (for the duration of the suspension), or
- b. in the case of a revocation, terminate

the right of relevant representative/s to access the credit exchange facility to conduct credit transfers with respect to the facility the subject of the suspension or revocation action.

Obligations

7. What members must do

- a. Members must ensure that representatives do not disclose their password to anybody, and do not store their password in any form or in any location where it is capable of being read by anybody other than the relevant representative.
- b. Members must ensure that representatives do not permit any other person, under the representative's supervision or otherwise, to use their credit exchange facility account.
- c. Members must ensure that representatives do not use the credit exchange facility:
 - i. for any activities that breach any laws, infringe a third party's rights, or breach any standards, content requirements or codes published by any relevant authority.
 - ii. to send electronic mail messages that are unrelated to the proper functioning of the Scheme.
- d. Members must ensure that representatives do not use the credit exchange facility, or any information on it, in a way that interferes with, defames, harasses or menaces other users, or restricts their ability to use it.
- e. Members must, as soon as practicable, notify the EPA in writing if the details relating to the member or their facility/ies change.
- f. Members must ensure that representatives keep their user account details up to date – either by using the online administration facility or by notifying the EPA in writing of any changes required.

8. Confidentiality

- a. Members must ensure that they and their representatives protect the confidentiality of their password/s, which must not be made available to anyone other than the representative to whom the password is allocated. All passwords created by the EPA are kept strictly confidential.

- b. Members must ensure that, when a representative to whom the EPA has allocated a generic password (e.g. HrStS123) accesses the credit exchange facility for the first time, the representative should change the generic password to a new password in order to ensure site security. The new password should not be readily identifiable with the member, representative or facility.
- c. Members must ensure that they and their representatives protect against any unauthorised use of their account/s. Members agree to be bound by all credit transfers made via their representatives' accounts. Where a person accesses the credit exchange facility using a username and password assigned to a member's representative, the EPA is entitled to assume that any action by that person – including any transfer of credits – is duly authorised by the member.
- d. If a representative (either a manager or general user) has forgotten their password, only the EPA can reset that person's password. The representative will need to contact the EPA to arrange for their password to be reset. The EPA will provide confirmation to the representative when the password has been reset.

Using the credit exchange facility

9. Credit transfer rules

The rules set out below reflect those set out in the Regulation.

- a. A member who holds a credit may, subject to the Regulation and these Terms and Conditions, transfer that credit to any other member, provided that both parties to the transfer are registered by the EPA to use the credit exchange facility.
- b. A member may transfer a credit as it relates to:
 - i. a particular block,
 - ii. a series of blocks, being blocks that occur in a sequential order, or
 - iii. all remaining blocks in the lifespan of the credit.
- c. If a member wishes to transfer a credit with respect to several blocks and the blocks are non-sequential, separate trades are required. Thus, parties could make one trade in respect of blocks relating to 1 to 5 November but would have to enter into a separate trade if they wished to also transfer a credit or credits in relation to the block on 7 November.
- d. A credit may be utilised only once in relation to a block and by one member in relation to each block.
- e. A member who holds a credit must not transfer a credit in respect of a block to any other member after having purported to include that credit in the calculation of their volume discharge limit with respect to that block.

Note: It is permissible for a member who does not wish to discharge into a particular block to transfer the authority conferred by the credit in respect of that block to a member who does wish to discharge into that block. This clause prevents a member from splitting one credit with another member by agreeing to share the authority conferred by the credit between the two of them, or from using the credit and then transferring it (with respect to the same block) to a member further downstream who is licensed to discharge.

- f. If a sector credit discount factor of less than one in relation to a particular block and sector is entered in the River Register, a member located in another sector must not transfer any credit/s in respect of that block to a member in the affected sector. (However, trading between members within an affected sector is permitted.)
- g. Before acquiring credits (either by making an offer to acquire credits or by accepting another party's offer to transfer credits), it is the responsibility of each member to check the River Register to ascertain whether a sector credit discount factor of less than one has been set. Once a discount factor is set, any credits subsequently acquired by a member in an affected sector cannot be included in that member's volume discharge limit for the purpose of discharging into an affected block (even though the transfer of credit/s is entered in the credit register).

Note: The purpose of applying a sector credit discount factor is to ensure that the salinity target in a particular sector is not exceeded. Once a sector credit discount factor has been set in the River Register, affected members are not permitted to acquire more credits with respect to the block to which the discount factor applies. This is because allowing trading *into* the affected sector would undermine the accuracy of the discount factor and could result in the salinity target for that sector being exceeded. However, a member in an affected sector may still transfer credits to members in *other* sectors (provided no discount factor has been set with respect to that other sector).

- h. Members must not transfer credits retrospectively. A transfer of a credit in respect of a block is retrospective if, when the transfer takes effect, the transferee's site discharge period for that block has already ended. A credit that has been transferred retrospectively may not be included in the calculation of the transferee's volume discharge limit (even though the transfer of the credit is entered in the credit register).

10. Using the noticeboard

- a. The noticeboard is provided to enable members to post notices regarding their interest in transferring or acquiring credits with respect to a particular block or series of blocks. The noticeboard is to be used solely for the purpose of posting messages relating to the Scheme. Members are responsible for the content of any notices posted to the noticeboard via their representatives' accounts.
- b. Notices will have a default expiry of seven calendar days from the date on which the notice is posted to the noticeboard. When creating a notice, a representative may, however, set the expiry of the notice for up to 60 days from the date on which the notice is posted to the noticeboard. Following the expiry of the notice, the notice will be archived and will no longer be displayed online.
- c. A representative may delete a notice that he or she has posted prior to it expiring.

11. Offers to transfer or acquire credits

- a. A member may make offers to transfer credits to, or acquire credits from, another member with respect to a particular block or series of blocks. [See 14 with respect to consideration for credit transfers.] The details of offers, including the number of credits and the blocks to which they relate, are displayed for up to seven days on the current offers page of the offeror and offeree only. (If an offer is accepted or declined during this period, the offer will no longer appear on the system.)
- b. When an offer is made, the credit exchange facility will – for the convenience of members – send an email to the offeree to notify them that an offer has been made. However, it is the responsibility of members to check their current offers page regularly. The EPA is under no obligation to provide the email notification service and is not liable for any loss or damage arising from any failure of the notification system.
- c. Once an offer has been made, the offeree may accept or decline the offer. If an offer is declined (by clicking the decline trade button), no credit transfer takes place and no change is made in the credit register.
- d. If a member wishes to accept an offer to transfer credits to or acquire credits from another party, the member must accept the offer by clicking the accept trade button. When this is done, the credits are transferred, and the credit register is updated automatically. The online credit exchange facility will then send an email to both parties to the transfer, notifying them that the transfer has taken effect. However, this email is provided for information only and forms no part of the transfer, which is complete once the offeree has clicked the accept trade button and the credit register has updated automatically.
- e. The offeror may withdraw an offer prior to it being accepted by clicking the delete offer button on their current offer page.

12. Offer expiry

If an offer has not been accepted or declined by the offer expiry date (seven calendar days after the date on which the offer was made), the offer will be archived and is no longer available. A new offer must be initiated if the trade is still of interest.

13. Paper trading

- a. Credits in the Scheme must be transferred using the credit exchange facility unless it is not available. In this circumstance, the EPA may give members written notice that the credit exchange facility is unavailable and that credits may instead be transferred using a paper-based system in accordance with the rules set out below.
- b. During the period specified in such a notice, a transfer of credits will be of force and effect when each of the following steps has been completed:
 - i. both the transferor and transferee has completed a credit transfer form (Attachment A) to these Terms and Conditions and has forwarded it to the EPA for approval; and
 - ii. The EPA has approved the transfer.
- c. The credit exchange facility administrator (the EPA or its delegate) will update the credit exchange facility to record the details of any paper-based trade that has been approved by the EPA when it becomes available again.

14. Consideration for credit transfers

- a. Members may transfer credits for any (or no) consideration as they see fit. This is negotiated between members outside the credit exchange facility. The EPA will not provide any advice about the value of credits.
- b. A credit transfer takes effect when a member clicks the accept trade button and the credit register is automatically updated, regardless of whether or not any contractual obligations between the parties concerning the transfer of credits have been fulfilled (e.g. whether consideration has been paid). The EPA is not liable for any loss or damage arising due to the failure of any party to perform any contractual obligations that may be agreed to outside the credit exchange facility.
- c. The credit exchange facility does not record whether any consideration has been paid, or the amount of any such consideration (unless details regarding consideration are provided in the notes section of an offer).

Note: For simplicity, the credit exchange facility refers to a transferor as a 'seller' and a transferee as a 'buyer'. This should not be taken to suggest that consideration is required in order to transfer credits using the credit exchange facility.

15. Links

- a. The credit exchange facility contains links to other websites. Links to other sites are provided for convenience only and do not represent any endorsement, representation or warranty by the EPA as to the accuracy of the information or services offered by the owners of such sites. The EPA and the state shall not be responsible for the content of any other sites or products accessed via the credit exchange facility.
- b. It is the responsibility of members to check the River Register for river flow classification, total allowable discharge, site discharge periods and sector credit discount factors, and to comply with the Scheme rules.

16. Credit holdings

- a. The member's holding report displays the number of credits held by a member with respect to a facility for a nominated block range.
- b. The member's trade potential report shows the number of credits that are available for a member to trade. Any credits that are the subject of current offers will not be shown in this report as being available to trade.
- c. Once a credit has been transferred to another member, the salt discharge entitlement conferred by the credit with respect to the relevant block or series of blocks accrues to the new holder.

System performance

17. Minimum system requirements

Members are responsible for ensuring that they have the hardware and software necessary to access the credit exchange facility.

18. No guarantee of availability or performance

- a. The EPA and the state do not represent that the credit exchange facility, or information on it, will be available.
- b. The credit exchange facility is provided for the convenience of members to facilitate the efficient transfer of credits in the Scheme. The EPA and the state are not liable for any loss or damage arising from the failure of any component of the credit exchange facility, or for any delay in the performance of any of the facility's functions.

19. Accuracy of information

- a. The EPA has taken all reasonable care to ensure that the information on the credit exchange facility is complete and correct. The EPA does not, however, warrant or represent that it is free from errors or omissions or that it is exhaustive.
- b. The EPA is not liable for loss or damage arising from any action or decision by a user in reliance on the credit exchange facility or information on it, nor any interruption, virus, communications failure, internet access difficulties, or malfunction in equipment or software.

20. Time on which system operates

The credit exchange facility operates in Australian Eastern Standard Time (AEST).

Note: Users should be aware that other systems (e.g. the River Register) may operate on a different basis (e.g. during daylight saving months).

21. Modifications to the website

The EPA reserves the right to alter the credit exchange facility, and any information on it, at any time and without notice.

22. Copying information from the website

Information on the credit exchange facility site may be used and reproduced for personal or educational purposes.