

SUBPART 231-5**NEW MAJOR FACILITIES AND MODIFICATIONS TO EXISTING NON-MAJOR FACILITIES IN NONATTAINMENT AREAS, AND ATTAINMENT AREAS OF THE STATE WITHIN THE OZONE TRANSPORT REGION**

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Historical Note

Subpart (§§ 231-5.1—231-5.5) filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-5.1 Applicability.

(a) The requirements of this Subpart apply, in nonattainment areas and attainment areas of the State within the ozone transport region, to the construction and/or operation of:

(1) any proposed facility which has the potential to emit a nonattainment contaminant in an amount that equals or exceeds the applicable major facility threshold, in tables 1 or 2 of Subpart 231-13 of this Part, for that contaminant; or

(2) a modification to an existing non-major facility which has a project emission potential for any nonattainment contaminant that equals or exceeds the applicable major facility threshold, in tables 1 or 2 of Subpart 231-13 of this Part, for that contaminant.

(b) An existing non-major facility that is located in a nonattainment area or an attainment area of the State within the ozone transport region which proposes a modification that has a project emission potential for any nonattainment contaminant that does not equal or exceed the applicable major facility threshold, in tables 1 or 2 of Subpart 231-13 of this Part, but would result in the facility becoming a major facility for such contaminant, is not subject to review under this Subpart. However, the facility owner or operator must apply for and obtain a permit in accordance with Part 201 of this Title and the permit must contain an emission limit(s) equal to the potential to emit of the emission source(s) affected by the modification.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing; amended adoption filed Feb. 3, 2009 eff. March 5, 2009. Amended (a)(1), (2), (b).

§ 231-5.2 Permit application content.

The information required in a permit application is set forth in Part 201 of this Title and generally in Subpart 231-11 of this Part. The following information must also be included at the time the application is submitted to the department, unless otherwise specified:

(a) A certification that all emission sources which are part of any major facility located in New York State and under the applicant's ownership or control (or under the ownership or control of any entity which controls, is controlled by, or has common control with the applicant) are in compliance, or are on a schedule for compliance, with all applicable emission limitations and standards under Chapter III of this Title.

(b) An analysis of alternative sites, sizes, production processes, and environmental control techniques which demonstrates that benefits of the proposed new or modified facility significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification within New York State.

(c) A LAER analysis in accordance with section 231-5.4 of this Subpart.

(d) *Emission offset information for VOC or NO_x*. At the time of the initial permit application or before the department issues a final permit determination, the applicant must submit:

(1) a list which identifies the source(s) of approved or proposed ERCs of VOC or NO_x that will be used as required emission offsets. This list must include the name and location of the

facility, DEC identification number, if applicable, and the emission reduction mechanism (*i.e.*, facility shutdown, emission unit shutdown, source reduction, curtailment, over control of emissions beyond an applicable limit). All the proposed ERCs must be certified prior to the issuance of the final permit; and

(2) a use of emission reduction credits form (duly completed and signed by the applicant and an authorized representative of the ERC seller) for each ERC source listed in paragraph (1) of this subdivision. Upon issuance of the permit for the proposed new or modified facility, the NYS ERC Registry will be amended to reflect that the ERCs are committed as emission offsets to the proposed new or modified facility; and

(3) for emissions of VOC or NO_x in an ozone nonattainment area, documentation of compliance with the contribution demonstration required according to the department's policy documents on air quality impact analyses pursuant to Subpart 231-12 of this Part.

(e) *Emission offset information for PM-10 and PM-2.5 (including its precursors SO₂ and NO_x)*. The following information must be submitted at the time of the initial permit application:

(1) a list which identifies the source(s) of approved or proposed ERCs of PM-10 or PM-2.5 (including its precursors SO₂ and NO_x) that will be used as required emission offsets. This list must include the name and location of the facility, DEC identification number, if applicable, and the emission reduction mechanism (*i.e.*, facility shutdown, emission unit shutdown, source reduction, curtailment, over control of emissions beyond an applicable limit);

(2) a use of emission reduction credits form (duly completed and signed by the applicant and an authorized representative of the ERC seller) for each ERC source listed in paragraph (1) of this subdivision. Upon issuance of the permit for the proposed new or modified facility, the NYS ERC Registry will be amended to reflect that the ERCs are committed as emission offsets to the proposed new or modified facility; and

(3) an air quality impact evaluation in accordance with the provisions of section 231-5.5(d) of this Subpart, Subpart 231-12 of this Part, and NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis.

Historical Note

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§ 231-5.3 Permit content and terms of issuance.

The permit content and terms of issuance are set forth generally in Subpart 231-11 of this Part. In addition, the following provisions apply:

(a) The following emission limitations, as applicable, shall be established in a permit:

(1) the potential to emit of all applicable nonattainment contaminants of a proposed facility;

(2) the potential to emit each applicable nonattainment contaminant of a modification at an existing non-major facility which has a project emission potential for any nonattainment contaminant that exceeds the major facility threshold for that contaminant; and

(3) any applicable LAER limitation.

(b) A revised air quality impact evaluation must be submitted, if applicable, if the emission offset list changes after the department provides a notice of complete application in accordance with Part 621 of this Title, and a supplemental public notice must be provided in accordance with subdivision (c) of this section.

(c) *Supplemental public notice requirements for ERCs used as emission offsets.* (1) A supplemental public notice is required prior to final permit issuance if the list of facilities providing ERCs for emission offsets is changed or finalized after the date of the notice of complete application. Such notice will be provided in accordance with Part 621 of this Title.

(2) A significant permit modification in accordance with Part 201 of this Title, and supplemental public notice are required if the list of facilities providing ERCs is changed after

final permit issuance and prior to commencement of operation. Such notice will be provided in accordance with Part 621 of this Title.

(d) A petition for party status pursuant to the supplemental notice provisions based on an offer of proof that raises substantive and significant issues related to emission offset requirements of this Part will not be considered as late filed petitions for party status pursuant to Part 624 of this Title.

(e) *Offset confirmation prior to the commencement of operation.* At least 60 days prior to the date a proposed new or modified facility commences operation, the permittee must submit an application to the department if there are any proposed changes to the approved list of emission offset sources included in the permit for that facility. For each such change, the applicant must submit another use of emission reduction credits form signed by the applicant and an authorized representative of the new offset source.

(f) *Future ERCs.* The permittee must submit prior to permit issuance a copy of each modified permit establishing future ERCs and a letter to the department stating that the future reductions have physically occurred. The letter shall be submitted as follows:

(1) no less than 10 working days prior to the date the proposed new or modified facility commences operation, except for a functional replacement of an existing emission source(s); or

(2) by the conclusion of the facility shakedown period, as identified under section 231-3.8 of this Part, for a functional replacement of an existing emission source(s).

(g) *Canceled or abandoned projects.* Prior to the commencement of operation, a facility owner or operator may notify the department of their intention to abandon the project and request a return of ERCs committed for use as emission offsets. Following the department's approval of such request and rescission of the permit, the department will return the unused ERCs to the ERC Registry.

Historical Note

Sec. filed Jan. 20, 2009; amds. filed: Dec. 29, 2010 as emergency measure; March 28, 2011 as emergency measure; May 26, 2011 as emergency measure; July 19, 2011 as emergency measure; Sept. 16, 2011 as emergency measure; Sept. 15, 2011 eff. 30 days after filing. Amended (b), (f)(2).

§ 231-5.4 Lowest achievable emission rate (LAER).

(a) For a proposed new or modified facility LAER is required for each emission source which emits a nonattainment contaminant for which the new facility or modification is major.

(b) In establishing the final LAER limit, the department may consider any new information, including recent permit decisions, or public comment received, subsequent to the submittal of a complete application.

(c) LAER will not be established in final form until the final permit is issued.

Historical Note

Sec. filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-5.5 Emission offset requirements.

(a) *Emission offset applicability.* (1) A proposed new facility which is subject to this Subpart must offset its potential to emit for each nonattainment contaminant for which it equals or exceeds the major facility threshold.

(2) A proposed modification to an existing non-major facility must offset its project emission potential for each nonattainment contaminant for which the project emission potential equals or exceeds the major facility threshold.

(b) *Offset ratio.* (1) An emission offset of VOC or NO_x as ozone precursors must exceed the corresponding facility potential to emit or project emission potential (subsequent to application of LAER), as appropriate, by the applicable offset ratio specified in Subpart 231-13 of this Part. A greater offset ratio may be required, on a case-by-case basis, to provide an acceptable contribution demonstration as set forth in this section.

(2) An emission offset of PM-10 must at least equal (offset ratio of one to one or greater) the corresponding facility potential to emit or project emission potential (subsequent to application of LAER), as appropriate, by the applicable offset ratio specified in Subpart 231-13 of this Part. A greater offset ratio may be required to provide a net air quality benefit as set forth in this section.

(3) An emission offset of PM-2.5 (including its precursors SO₂ and NO_x) must at least equal (offset ratio of one to one or greater) the corresponding facility potential to emit or project emission potential of the same pollutant (subsequent to application of LAER), as appropriate, by the applicable offset ratio specified in Subpart 231-13 of this Part. A greater offset ratio may be required to provide a net air quality benefit as set forth in this section. ~~Inter-pollutant trading may be used for offsetting direct emissions of PM-2.5 (including its precursors SO₂ and NO_x). Inter-pollutant offset ratios are as follows: one ton PM-2.5 offsets 200 tons NO_x, one ton PM-2.5 offsets 40 tons SO₂, 200 tons NO_x offsets one ton PM-2.5 and 40 tons SO₂ offsets one ton PM-2.5. The use of NO_x and SO₂ to offset one another is not allowed.~~

(c) *Use of an ERC as part of an emission offset.* An ERC must meet the following conditions to be used as part of an emission offset:

- (1) for NO_x, PM-10, or VOC emissions, ERCs must have physically occurred on or after November 15, 1990 but need not be contemporaneous;
- (2) for PM-2.5 (including its precursors SO₂ and NO_x) ERCs must have physically occurred on or after April 5, 2005 but need not be contemporaneous;
- (3) an ERC, or portion thereof, must be included as a condition in the permit for the proposed new or modified facility for which the reduction is used.

(d) *Net air quality benefit and emission offset location for PM-10, or PM-2.5 (including its precursors SO₂ and NO_x).* An emission offset of PM-10, or PM-2.5 (including its precursors SO₂ and NO_x) must meet the following:

(1) Contribution demonstration. An emission offset may be obtained from the same nonattainment area in which a proposed new or modified facility is to be located. An emission offset may also be obtained from other nonattainment areas of equal or higher classification if emissions from such other areas contribute to a violation of the NAAQS for PM-10 or PM-2.5, as applicable, in the nonattainment area where the proposed new or modified facility is to be located. These other areas must be determined in accordance with NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis.

(2) Net air quality benefit demonstration. As part of a permit application, the applicant must submit an air quality impact evaluation for PM-10 and PM-2.5, as applicable, in accordance with NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis. The ambient air quality impact analysis must demonstrate that:

- (i) the net impact of the proposed emissions increase and the emission offset provides for a net benefit, on balance, in the area affected by the proposed new or modified facility; and
- (ii) for PM-10 and PM-2.5, the net impact in no case exceeds an applicable significant impact level of section 231-12.6 of this Part.

(3) Interstate offsets. An emission offset of PM-10 or PM-2.5 (including its precursors SO₂ and NO_x), from areas of equal or higher classification may be obtained from another state, in accordance with NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis, provided that an interstate reciprocal trading agreement is in place and the requirements of paragraphs (1) and (2) of this subdivision are met.

(e) *Ozone nonattainment and emission offset location.* The NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis must be used by an applicant to find default acceptable VOC or NO_x offset source locations within New York State or to perform a case specific contribution demonstration. An emission offset of VOC or NO_x is subject to the following:

- (1) Proposed new or modified facility located in an ozone nonattainment area.
 - (i) Intrastate offset sources. An emission offset of VOC or NO_x must be obtained from:

- (a) the same ozone nonattainment area; or
 - (b) other ozone nonattainment areas of equal or higher classification, if emissions from such other areas contribute to a violation of the NAAQS for ozone in the nonattainment area where the proposed new or modified facility is to be located.
- (ii) Interstate offset sources. An emission offset may be obtained from other ozone nonattainment areas of equal or higher classification in another state, if emissions from such other areas contribute to a violation of the NAAQS for ozone in the nonattainment area where the proposed new or modified facility is to be located and an interstate reciprocal trading agreement is in place. The NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis may be used by an applicant to perform a case specific contribution demonstration.
- (2) Proposed new or modified facility located in an attainment area of the state within the ozone transport region. An emission offset of VOC or NO_x may be obtained from any location within the ozone transport region. Such an offset may also be obtained from another state in the ozone transport region, provided that an interstate reciprocal trading agreement is in place.

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