

SUBPART 231-6**MODIFICATIONS TO EXISTING MAJOR FACILITIES IN
NONATTAINMENT AREAS AND ATTAINMENT AREAS OF THE STATE
WITHIN THE OZONE TRANSPORT REGION**

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Historical Note

Subpart (§§ 231-6.1—231-6.7) filed Jan. 20, 2009 eff. 30 days after filing.

§ 231-6.1 Applicability.

The requirements of this Subpart apply to the construction and/or operation of any proposed modification at an existing major facility located in a nonattainment area, or an attainment area of the State within the ozone transport region as follows:

(a) For a modification with a project emission potential, calculated utilizing projected actual emissions, which does not equal or exceed the applicable significant project threshold in table 3 or table 4 of Subpart 231-13 of this Part, the facility owner or operator must comply with the provisions of section 231-11.2 of this Part.

(b) For a modification with a project emission potential which equals or exceeds the applicable significant project threshold in table 3 or table 4 of Subpart 231-13 of this Part, but does not result in a NSR major modification, the facility owner or operator must comply with the provisions of section 231-6.2 of this Subpart.

(c) For a modification which the facility determines will result in a NSR major modification, the facility owner or operator must comply with the provisions of this Subpart as appropriate.

(d) *Special applicability rules for modifications of existing major facilities in severe ozone nonattainment areas.* (1) Modifications of facilities emitting less than 100 tpy. In the case of any major facility of VOC or NO_x (other than a facility which emits or has the potential to emit 100 tpy or more of VOC or NO_x), whenever any modification at the facility results in an NSR major modification of VOC or NO_x from any discrete operation, emission source, or other regulated NSR contaminant emitting activity at the facility, such emission increase shall be considered as a modification for purposes of requiring a permit under this Part, except that such increase shall not be considered a modification for such purposes if the owner or operator of the facility elects to offset the emission increase by a greater reduction in emissions of VOC or NO_x, as applicable, from other operations, emission sources, or activities within the facility at an internal offset ratio of at least 1.3 to 1. If the owner or operator does not make such election, the modification shall be considered an NSR major modification for such purposes, but in applying control requirements, BACT shall be substituted for LAER.

(2) Modifications of facilities emitting 100 tpy or more. In the case of any major facility of VOC or NO_x which emits or has the potential to emit 100 tpy or more of VOC or NO_x whenever any modification at the facility results in an NSR major modification of VOC or NO_x from any discrete operation, emission source, or other contaminant emitting activity at the facility, such emission increase shall be considered a modification for purposes of requiring a permit under this Part, except that if the owner or operator of the facility elects to offset the emission increase by a greater reduction in emissions of VOC or NO_x, as applicable, from other operations, emission sources, or activities within the facility at an internal offset ratio of at least 1.3 to 1, the requirements of LAER shall not apply.

Historical Note

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

§ 231-6.2 Netting.

This section sets forth the procedures for avoiding a NSR major modification where the proposed modification exceeds the significant project threshold(s) but does not result in a significant net emission increase.

(a) *General requirements.* (1) A net emission increase determination shall be confined to the appropriate contemporaneous period for a proposed modification.

(2) Any ERC which is used in a net emission increase determination must have physically occurred on or after the applicable date listed in section 231-6.6(c) of this Subpart.

(3) A net emission increase determination will only be allowed at an existing major facility.

(4) Any creditable emission increase or ERC must be of the same class of nonattainment contaminant. For example, only NO_x emissions shall be used for netting of new NO_x emissions, only PM-2.5 shall be used for netting of new PM-2.5 emissions.

(5) Any creditable emission increase or ERC which is used in a net emission increase determination must occur at the same major facility as the proposed modification.

(6) Any creditable emission increase from an emission source issued a permit for which an emission offset or an internal offset was obtained, shall not be considered in any subsequent net emission increase determination.

(b) *Permit requirements for netting.* A facility owner or operator which proposes a modification that does not result in a significant net emission increase, must:

(1) apply for and obtain a permit which establishes an emission limit that equals the projected actual emissions or potential to emit, as appropriate, of the modification of each nonattainment contaminant(s) which exceed(s) the applicable significant project threshold;

(2) apply for and obtain a permit which establishes the ERCs relied on for the net emission increase determination, if the ERCs are not already approved by the department;

(3) submit a use of emission reduction credits form (duly completed and signed by the applicant) for each source of ERCs to be used for netting. Upon issuance of the permit for the proposed modification, the ERC Registry will be amended to reflect that the ERCs have been committed to the proposed modification; and

(4) apply for and obtain a permit which complies with any additional requirements of Subpart 231-11 of this Part.

(c) *Re-evaluation of a prior net emission increase determination at a facility that was not significant.* The facility owner or operator must reevaluate the determination of the net emission increase of a prior modification which did not result in a significant net emission increase if a proposed modification will commence operation within the contemporaneous period of the prior modification. The facility owner or operator must recalculate the net emission increase of the prior modification at the facility by including the project emission potential of the proposed modification as a creditable emission increase. If the recalculated net emission increase of the prior modification results in a significant net emission increase, taking into account the proposed modification, the facility owner or operator must select one of the following options:

(1) submit a permit application and accept a condition prohibiting the proposed modification from commencing operation until after the close of the contemporaneous period for the previously permitted modification; or

(2) create additional ERCs according to the provisions of Subpart 231-10 of this Part at the facility in an amount which ensures that the net emission increase of the prior modification, after taking into account the creditable emission increase of the proposed modification does not result in a significant net emission increase; or

(3) submit an application requesting modification of the permit for the prior modification which reflects the applicability of this Subpart. The facility owner or operator may not begin

actual construction of the prior modification or begin operation until the department approves the application and issues a permit which incorporates the requirements of this Subpart.

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 (a)(2), (4).

§ 231-6.3 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 a permit 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 project or proposed major 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 231-6.5 of this Subpart.

(d) *Emission offset and internal offset information for VOC or NO_x*. At the time of the initial permit application or before the department issues a final permit determination for a NSR major modification, 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 an internal offset or required emission offset. 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;

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

(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 modification, the NYS ERC Registry will be amended to reflect that the ERCs are committed as emission offsets to the proposed modification; and

(3) an air quality impact evaluation in accordance with the provisions of section 231-6.6(d) of this Subpart, Subpart 231-12 of this Part, and NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis.

Historical Note

Sec. filed Jan. 20, 2009; amended adoption filed Feb. 3, 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 intro. para., (d)(1), (e).

§ 231-6.4 Permit content and terms of issuance.

The permit content and terms of issuance for an NSR major modification 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 projected actual emissions or potential to emit, as appropriate, of each applicable nonattainment contaminant(s) for a proposed NSR major modification; and

(2) any LAER limitation.

(b) A revised air quality impact evaluation must be submitted, if applicable, if the internal offset or 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 an internal offset or emission offset.* (1) A supplemental public notice is required prior to final permit issuance, if the list of ERCs provided as internal offsets or emission offsets is changed or finalized after the date 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 internal offset or 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 modification commences operation, the permittee must submit an application to the department if there are any proposed changes to the approved list of internal offset or 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 an internal offset or emission offset. 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 (a)(1), (b), (c)(2), (f)(2).

§ 231-6.5 Lowest achievable emission rate (LAER).

(a) For a proposed NSR major modification, LAER is required for each emission source which emits the applicable nonattainment contaminant.

(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; 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 sec. title, (c).

§ 231-6.6 Emission offset requirements.

(a) *Emission offset applicability.* For a NSR major modification, the project emission potential must be offset.

(b) *Offset ratio.* (1) An emission offset of VOC or NO_x must exceed the corresponding 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 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 an emission offset.* An ERC must meet the following requirements to be used as an emission offset:

(1) for NO_x, PM-10, and 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 established in the permit for the proposed NSR major modification 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 requirements:

(1) Contribution demonstration. An emission offset may be obtained from the same nonattainment area in which a proposed NSR major modification 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 in the nonattainment area where the proposed NSR major modification 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 NSR major modification; and
- (ii) for PM-10 and PM-2.5, the net impact in no case exceeds an applicable significant impact level set forth in 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 NSR major modification located in an ozone nonattainment area.
 - (i) Intrastate offset sources. An emission offset of VOC or NO_x 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 NSR major modification 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 NSR major modification 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 NSR major modification 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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§ 231-6.7 Internal offset requirements, severe ozone nonattainment area only.

This section represents a mechanism for avoiding a determination of applicability of this Part, for emissions of VOC or NO_x in the severe ozone nonattainment area only, in those instances where an NSR major modification is proposed at an existing major facility and a net emission increase determination of non-applicability is not possible.

(a) *Internal offset applicability.* An internal offset shall be considered for purposes of determining applicability or degree of control required under section 231-6.1(d)(1) or (2) of this subpart for a proposed NSR major modification.

(b) Use of a NO_x or VOC ERC as part of an internal offset. An ERC shall meet the following conditions to be used as part of an internal offset:

(1) an ERC shall come from an emission source within the same existing major facility as a proposed NSR major modification;

(2) an ERC shall have physically occurred on or after November 15, 1990, but need not be contemporaneous with a proposed NSR major modification for which the reduction is used; and

(3) an ERC, or portion thereof, shall be included as a condition in the permit for the proposed NSR major modification for which the reduction is used.

Historical Note

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