PART 201

PERMITS AND CERTIFICATES

(Statutory authority: Environmental Conservation Law, §§ 3-30301, 19-0301, 19-0303)

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Historical Note

Part (§§ 201.1-201.4) renum. Part 371, Title 9, filed Sept. 1971; new (§§ 201.1-201.5) filed April 28, 1972; repealed, new filed: May 17, 1972; Feb. 22, 1979 eff. Feb. 22, 1979.

Section 201.1 Applicability. This Part shall apply throughout the State of New York; provided, however, that the commissioner may, by order filed with the Secretary of State, exempt persons in a city or county, in whole or in part, from the provisions of this Part where the commissioner has determined that such city or county has enacted a local law, ordinance or regulation which is consistent with this Part or applicable portions thereof, and that such city or county has adequate staff to enforce and will enforce the provisions of such local law, ordinance or regulation; and provided, further, that the commissioner may, by order filed with the Secretary of State, delegate the enforcement of this Part, in whole or in part, to a city or a county where the commissioner has determined that such city or county has adequate staff to enforce the provisions of this Part, or applicable portions thereof. The commissioner may revoke any such exemption or delegation where he determines that the stated conditions no longer exist. An order of exemption or delegation to a city or county may contain such provisions concerning review of actions of any such city or county as the commissioner may deem necessary.

Historical Note

Sec. amd. filed Sept. 18, 1970; renum. 371.1, Title 9, filed Sept. 1971; new filed April 28, 1972; repealed, new filed: May 17, 1972; Feb. 22, 1979 eff. Feb. 22, 1979.

201.2 Prohibitions. (a) Except as provided in section 201.6 of this Part, no person shall commence construction of an air contamination source or proceed with a modification without having a valid permit to construct issued by the commissioner.

(b) No person shall operate an air contamination source without having a valid certificate to operate issued by the commissioner, except:

(1) as provided in section 201.6 of this Part;

(2) where the air contamination source is being operated under a commissioner's order, administrative order, or any judicial document; or

(3) for a period of no more than six months, where the air contamination source is being operated to enable the source owner or operator to perform a stack test when such a test is a requirement of the permit to construct.

(c) A person who owns or operates an air contamination source shall construct, modify, test, install and operate such source in accordance with all the conditions of the applicable permit to construct or certificate to operate.

Historical Note

Sec. amds. filed: June 26, 1968; Sept. 18, 1970; renum. 371.2, Title 9, filed Sept. 1971; new filed April 28, 1972; repealed, new filed: May 17, 1972; Feb. 22, 1979; amds. filed: March 5, 1993 eff. 30 days after filing; April 2, 1993 eff. April 4, 1993.

201.3 Application for permits and certificates. (a) An application for a permit to construct or certificate to operate for an air contamination source shall be filed with the commissioner on a form and in a manner prescribed by the commissioner and shall include such information as the commissioner shall require to determine whether the air contamination source will be in compliance with the provisions of section 201.4(a)(1)-(3) of this Part. Such information may include, but shall not be limited to: type, rate and quantity of emission; description of the air contamination source, its location and operation; plans and specifications for the air contamination source (required with an application for a permit to construct) and, as appropriate, the location and description of stack sampling ports, test scaffolds and continuous emission monitoring systems. The specific time limits for such application review shall be in accordance with Part 621 of this Title.

(b) If the application for a permit to construct or certificate to operate is disapproved, the applicant shall be notified in writing of the reasons.

Historical Note

Sec. amds. filed: Sept. 18, 1970; Jan. 15, 1971; renum. 371.3, Title 9, filed Sept. 1971; new filed April 28, 1972; repealed, new filed: May 17, 1972; Feb. 22, 1979 eff. Feb. 22, 1979.

201.4 Issuance, suspension and revocation of permits and certificates. (a) The commissioner will not issue a permit to construct or a certificate to operate unless he determines that:

(1) the operation of the source will not prevent the attainment or maintenance of any applicable ambient air quality standard;

(2) the operation of the source will not result in a violation of any of the provisions of this Chapter; and

(3) the operation of the source will not result in a violation of any applicable control strategy of a federally approved air quality implementation plan in effect at the time that an application is submitted.

(b) Such permit or certificate may contain such conditions as the commissioner shall require to insure compliance with paragraphs (a)(1)-(3) of this section, including the installation of stack sampling ports and appurtenant equipment. The commissioner may also impose such conditions as are necessary to insure compliance with applicable Federal source standards and reporting requirements.

(c) The commissioner may suspend, modify or revoke a certificate or permit in accordance with the provisions of section 621.11 of this Title.

Historical Note

Sec. renum. 371.4, Title 9, filed Sept. 1971; new filed April 28, 1972; repealed, new filed: May 17, 1972; Feb. 22, 1979 eff. Feb. 22, 1979.

201.5 Permits and certificates. (a) A permit to construct shall be valid for up to one year from the date of issuance unless renewed by the commissioner upon written application for periods of not more than one year or unless suspended or revoked by the commissioner.

(b) A certificate to operate shall be valid for a period not to exceed five years unless renewed by the commissioner upon written application or unless suspended or revoked; provided, however, a certificate to operate shall be valid for not more than one year where:

(1) the air contamination source for which the certificate is issued is a temporary, trial or experimental installation; or

(2) submission and acceptance of a stack test report or other information is a condition of the certificate.

(c) A permit or certificate is valid only for the air contamination source, owner/operator, facility, and mode of operation stated in the application, permit or certificate, and can only be transferred to a new owner/operator, if the mode of operation and emissions do not change and the source complies with all applicable regulations and special conditions.

(d) Notwithstanding the provisions of subdivision (b) of this section, a certificate to operate will cease to be valid under the following circumstances:

(1) the air contamination source or its method of operation is changed to constitute a modification or reconstruction. The source owner must first obtain a permit to construct for the modification or reconstruction;

(2) the certificate to operate is suspended or revoked; or

(3) the permissible emission rate of the air contamination source changes.

(e) Any person who owns an air contamination source or air cleaning device shall operate and maintain such source or device in compliance with all applicable Parts of this Chapter and existing laws. Failure of such person to operate and maintain the effectiveness of such source and/or device shall be sufficient reason for the commissioner to revoke or deny a certificate to operate. At the discretion of the commissioner, a violation of any applicable emission standard for necessary scheduled equipment maintenance, start-up conditions and malfunctions may be excused if such violations are unavoidable.

(1) The source owner/operator shall compile and maintain records of all equipment maintenance or start-up activities when they can be expected to result in a violation of any applicable emission standard, and shall submit a report of such activities to the commissioner's representative when requested to do so in writing or when so required by a condition of a permit or certificate issued for the corresponding air contamination source. Such reports shall describe why the violation was unavoidable and shall include the time, frequency and duration of the maintenance and/or start-up activities and the identification of air contaminants, the estimated emission rates, the maximum ground level concentration of each contaminant, and the effect of such emissions. If a source owner is subject to continuous stack monitoring and quarterly reporting requirements, he need not submit reports for equipment maintenance or start-up for the affected source to the commissioner's representative.

(2) *Malfunction* shall mean any sudden and unavoidable failure of an air cleaning device or air contamination source to operate in compliance with all applicable Parts of this Chapter, and shall not include failures that are caused entirely or partially by poor maintenance, careless operation, or other preventable condition. In the event that emissions of air contaminants in excess of any emission standard in this Subchapter occur due to a malfunction, the source owner shall report such malfunction by telephone to the commissioner's representative as soon as possible during normal working hours, but in any event not later than 72 hours after the malfunction occurs. Within 30 days thereafter, when requested in writing by the commissioner's representative, the source owner shall submit a written report to the commissioner's representative describing why the malfunction was unavoidable and the nature, cause, time and duration of the malfunction, the corrective action taken, identification of air contaminants, and estimate of the emission rates, and the maximum ground level concentration of each air contaminant emitted and the effect of such emissions.

(3) In the event of maintenance, start-up or malfunction conditions which result in emissions exceeding any applicable emission standard, the source owner shall take

appropriate action to prevent emissions which will result in contravention of any applicable ambient air quality standard. Reasonably available control technology, as determined by the commissioner, shall be applied during any maintenance, start-up, or malfunction condition subject to this subdivision.

Historical Note

Sec. filed April 23, 1972; repealed, new filed: May 17, 1972; Feb. 22, 1979; amds. filed: April 10, 1981; March 5, 1993 eff. 30 days after filing; April 2, 1993 eff. April 4, 1993.

201.6 Exemptions. A person who owns or operates any of the following air contamination sources is exempt from all provisions of the other sections of this Part, but is not exempt from other Parts of this Subchapter:

(a) combustion installations where the maximum operating heat input is less than 1,000,000 Btu per hour. If two or more furnaces are connected to a common air cleaning device and/or common stack, the total heat input for such stationary combustion installation is either the sum of the maximum operating heat inputs of all furnaces which are operated simultaneously and connected to the common air cleaning device and/or common stack, or the maximum operating heat input of any individual furnaces operated independently and connected to the common air cleaning device and/or common stack, whichever is greater. This exemption does not apply to combustion installations which are waste fuel pursuant to Subpart 225-2 of this Title;

(b) stationary internal combustion engines under 400 horsepower;

(c) unit space heaters;

(d) fuel burning equipment, which is not equipped to burn residual oil or solid fuel, using as fuel No. 2 oil, natural gas, diesel oil, natural gas, L.P. gas, or a mixed gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of New York, but excluding any stationary combustion installation with a heat input exceeding 250 million Btu per hour regardless of fuel type, and excluding any gas turbine with a maximum operating heat input of 10 million Btu per hour or more and for which construction began after October 2, 1977;

(e) emergency equipment installed in hospitals or other public institutions or buildings for use when the usual sources of heat, power, and lighting are temporarily unobtainable;

(f) emergency relief vents, stacks and ventilating systems except any with the potential to emit vinyl chloride located at a facility where ethylene dichloride, vinyl chloride and/or polyvinyl chloride are produced;

(g) vehicles for transportation of passengers and/or freight;

(h) vacuum cleaning systems used exclusively for commercial or residential housekeeping;

(i) ventilating systems used for heating or cooling buildings for the comfort of people living or working within the building;

(j) ventilating and exhaust systems for laboratory hoods used:

(1) for air contaminants other than carcinogenic or radioactive air contaminants; and

(2) for radioactive air contaminants subject to Part 380 of this Title, where:

(i) the concentration for radionuclide in the emissions is 10 percent or less of the permissible emission concentration; or

(ii) the quantity of radionuclide emitted annually is less than 10 times the permissible quantity of radioactive material (see Appendices 5 and 6 of 6 NYCRR Part 380);

(k) process, exhaust or ventilating systems in bakeries or establishments preparing food for onsite human consumption;

(l) process or exhaust or ventilating systems or stationary combustion installations exclusively involved in the production of maple syrups;

(m) process or exhaust or ventilating systems involved in the production of food, food blanching or cooking in water, or any process where only water vapor or carbon dioxide is released;

(n) exhaust or ventilating systems for lead melting pots in printing establishments;

(o) exhaust or ventilating systems for photocopying, photographic or other related process equipment where no ammonia gas is generated;

(p) ventilating systems used in buildings to house animals;

(q) processing equipment at existing sand and gravel and stone crushing plants which were installed or constructed before August 31, 1983, where water is used other than for dust suppression, such as wet conveying, separating and washing;

(r) all processing equipment at sand and gravel mines or quarries that:

(1) are permanent or fixed installations with a maximum rated processing capacity of 25 tons of minerals per hour or less; or

(2) are mobile (portable) installations with a maximum rated processing capacity of 150 tons of minerals per hour or less;

(s) exhaust or ventilating systems for melting of gold, silver, platinum and other precious metals;

(t) welding or soldering operations from which emissions are released to the outdoor atmosphere other than through a stack;

(u) open fires;

(v) fecal incinerators with a charging rate not exceeding 10 pounds per hour, such as those used in certain vehicles or other special cases;

(w) distillate and residual fuel oil storage vessels;

(x) dry cleaning facilities whose construction commenced before May 10, 1981 and whose annual emissions of volatile organic compounds are 15 tons per year or less;

(y) gasoline dispensing sites with an annual throughput less than 120,000 gallons located outside of the New York City metropolitan area and the Lower Orange County metropolitan area;

(z) unheated, nonconveyorized cleaning equipment:

(1) with an open surface area of 11 square feet or less and an internal volume of 93 gallons or less, having an organic solvent loss of three gallons per day or less; or

(2) using only organic solvents with an initial boiling point of 300°F or greater; or

(3) using materials with a volatile organic compound content of two percent or less, by volume;

(aa) remote reservoir parts cleaners whose use of solvent is contained to the immediate cleaning of the part, after which time the solvent is drained through a drain opening, not to exceed 15 square inches, and is returned to a remote reservoir containing the solvent.

Notwithstanding any exemption contained in this section, any source which is a major project, as defined in section 621.4(g)(2)(i) or (ii) of this Title will be subject to the provisions of this Part if construction begins after July 21, 1982.

Historical Note

Sec. filed May 17, 1972; repealed, new filed Feb. 22, 1979; amds. filed: April 10, 1984; March 5, 1993 eff. 30 days after filing; April 2, 1993 eff. April 4, 1993.

201.7 Recycling, salvage or disposal of collected air contaminants. (a) Where practical, any person who owns or operates an air contamination source shall recycle or salvage air contaminants collected in an air cleaning device.

(b) No person shall remove collected air contaminants from an air cleaning device or shall recycle, salvage or dispose of such air contaminants in a manner so as to reintroduce them to the outdoor atmosphere to cause air pollution.

Historical Note

Sec. filed May 17, 1972; repealed, new filed Feb. 22, 1979 eff. Feb. 22, 1979.

201.8 Voluntary replacement or upgrading of air cleaning equipment used with an existing source. Any person applying for a permit to construct for replacement or upgrading air cleaning equipment used with an existing air contamination source which is in compliance with this Chapter and for which there is no increase in the hourly emission rate, emission concentration or emission opacity of any air contaminant, shall comply with all emission standards and other requirements applicable to the existing source. This section does not apply to existing sources for which no certificate to operate was previously issued.

Historical Note

Sec. filed May 17, 1972; repealed, new filed Feb. 22, 1979 eff. Feb. 22, 1979.

201.9 Reactivation of an existing source which has been shut down voluntarily. Any person applying for a certificate to operate for a reactivated existing air contamination source which has been shut down voluntarily and which was in compliance with emission standards at the time of shutdown, shall only be required to comply with emission standards applicable to existing sources at the time of start-up.

Historical Note

Sec. filed May 17, 1972; repealed, new filed Feb. 22, 1979 eff. Feb. 22, 1979.