

**PART 231****NEW SOURCE REVIEW FOR NEW AND MODIFIED FACILITIES**

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, 71-2105; Federal Clean Air Act, §§ 160-169, 171-193 [42 U.S.C. 7470-7479; 7501-7515])

- Subpart 231-1 Requirements for Emission Sources Subject to the Regulation Prior to November 15, 1992
- Subpart 231-2 Requirements for Emission Units Subject to the Regulation on or after November 15, 1992 and Prior to February 19, 2009
- Subpart 231-3 General Provisions
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- 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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- Subpart 231-7 New Major Facilities and Modifications to Existing Non-major Facilities in Attainment Areas (Prevention of Significant Deterioration)
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- Subpart 231-9 Plantwide Applicability Limitation (PAL)
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**Historical Note**

Part (§§ 231.1-231.13) renum. Part 388, Title 9, filed Sept. 1971; new (§§ 231.1-231.9) filed July 24, 1979; repealed, new (§§ 231.1-231.10) filed July 10, 1984; Part (*New Source Review in Nonattainment Areas and Ozone Transport Regions*, §§ 231.1-231.10) renum. Subpart 231-1, filed Sept. 15, 1994; amd. filed Jan. 20, 2009 eff. 30 days after filing. Amended Part title.

**SUBPART 231-1****REQUIREMENTS FOR EMISSION SOURCES SUBJECT TO THE REGULATION PRIOR TO NOVEMBER 15, 1992**

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**Historical Note**

Subpart (§§ 231-1.1—231-1.10) added by renum. Part 231, filed Sept. 15, 1994 eff. 30 days after filing.

**§ 231-1.1 Definitions.**

- (a) For the purpose of this Subpart, the general definitions of Part 200 of this Title apply.
- (b) For the purpose of this Subpart, the following definitions also apply:
  - (1) *Actual emission reduction.* The actual decrease in the rate of emissions of an air contaminant from an emission source in tons per year. This value is generally an average rate

at which the source actually emitted the contaminant during the two years preceding the reduction, and is representative of normal source operation based on actual operating hours, production rates and material input. A different averaging time period may be acceptable if it can be shown to be more representative of normal operation than the two-year period preceding the reductions.

(2) *Air contamination source project*. This may consist of either a proposed:

(i) new air contamination source;

(ii) modification; or

(iii) two or more proposed new air contamination sources which are interdependent as process or production steps for a common product or similar products.

(3) *Annual actual emissions*. The annual emissions, including fugitive emissions, of an air contaminant from a facility after control equipment has been applied and based on continuous operation at maximum capacity. Annual actual emissions may be limited by permit conditions regarding operating time or production rate.

(4) *De minimis emission limits*. Threshold increase in annual actual emissions from an air contamination source project below which the provisions of this Subpart do not apply. The *de minimis* emission limits are presented in section 231-1.9 of this Subpart.

(5) *Emission offsets*. Emissions reductions which are obtained to provide reasonable progress toward attainment of ambient air quality standards in exchange for approval of an application for a permit to construct for a new air contamination source project in a nonattainment area.

(6) *Major facility*. A facility whose annual actual emissions for either particulates, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds equal or exceed 100 tons per year.

(7) *Major lead facility*. A facility whose annual actual emissions of lead equal or exceed five tons per year.

(8) *Resource recovery facility*. Any facility at which refuse is combusted for the purpose of recovering heat for use in producing steam and/or electricity. Energy conversion facilities must utilize solid waste to provide more than 50 percent of the heat input to qualify as a resource recovery facility.

#### Historical Note

Sec. added by renum. and amd. 231.1, filed Sept. 15, 1994 eff. 30 days after filing.

#### § 231-1.2 Applicability.

(a) The provisions of this Subpart are applicable to all air contamination source projects which meet the following conditions:

(1) the complete application for a permit to construct the air contamination source project is submitted after August 9, 1984 and is determined complete by the department in accordance with Part 621 of this Title before November 15, 1992;

(2) the facility at which the air contamination source project is proposed is located in an area designated as a nonattainment area when the application for the project is determined complete for the same air contaminant that the proposed air contamination source project would emit (for ozone nonattainment areas, this applies to projects that emit volatile organic compounds); and

(3) the annual actual emissions from the air contamination source project proposed at an existing major facility exceed the *de minimis* emission limits shown in section 231-1.9 of this Subpart; or

(4) the facility at which the air contamination source project is proposed is not a major facility, but the annual actual emissions from the proposed air contamination source project equal or exceed 100 tons per year of either particulates, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds.

(b) The provisions of this Subpart are applicable to all air contamination source projects with annual actual emissions exceeding the *de minimis* emission limit for lead shown in section 231-

1.9 of this Subpart, proposed at major lead facilities if the complete application for a permit to construct the air contamination source project is submitted after August 9, 1984 and the major lead facility is located in an area designated as nonattainment with ambient air quality standards for lead.

(c) Emission reductions at the same facility as the proposed air contamination source project may be considered to calculate the net increase in emissions which must exceed the *de minimis* emission limit for the project to be subject to this Subpart. Determination of the net emissions increase is subject to the following:

- (1) To be considered, emission reductions must be of the same contaminant(s) to be emitted by the proposed air contamination source project.
- (2) To be considered, emission reductions must have occurred within five years prior to the date of submittal of a complete application for a permit to construct the air contamination source project.
- (3) An emission reduction which is considered in a net emission increase determination cannot be used again either to negate subsequent emission increases or as an emission offset, and must not have been used for demonstrating attainment with ambient air quality standards or reasonable further progress in a federally approved implementation plan.
- (4) An emission reduction must have approximately the same qualitative significance for public health and welfare as that attributed to the air contaminant whose emissions are increased.
- (5) Only potential emission increases and actual emission decreases are to be included in a net emissions increase determination.
- (6) The net emissions increase calculated by considering actual emission reductions as well as proposed increases must also include past increases, as of five years prior to the date of submittal of a complete application for a permit to construct the air contamination source project, which did not exceed the *de minimis* emission limits when they were proposed.
- (7) Any emission reductions used in a net emissions increase determination will be described in the conditions of approval on the permit to construct.

**Historical Note**

Sec. added by renum. and amd. 231.2, filed Sept. 15, 1994 eff. 30 days after filing.

**§ 231-1.3 Prohibitions.**

(a) No person will initiate construction of any air contamination source project to which this Subpart applies until the provisions of this Subpart have been met and a permit or permits to construct have been issued in accordance with Part 201 of this Title.

(b) The commissioner will not issue a permit to construct for any air contamination source project subject to this Subpart unless the applicant certifies that all major facilities 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:

- (1) in compliance with all applicable air pollution control regulations; or
- (2) are meeting the terms of any administrative order or court decree.

(c) At such time that a particular facility becomes a major facility, or the annual actual emissions from an air contamination source project exceed the *de minimis* emission limits shown in section 231-1.9 of this Subpart, solely because of a relaxation in any enforceable limitation, established after August 9, 1984, on the capacity of the facility or air contamination source project to emit an air contaminant, the requirements of this Subpart will apply and an application for a permit to construct must be submitted to the department pursuant to Part 621—Uniform Procedures of this Title.

**Historical Note**

Sec. added by renum. and amd. 231.3, filed Sept. 15, 1994 eff. 30 days after filing.

**§ 231-1.4 Lowest achievable emission rate.**

(a) The emissions from any air contamination source project subject to this Subpart must meet the lowest achievable emission rate as defined in Part 200 of this Title.

(b) Any source owner subject to this Subpart must submit information to establish that the lowest achievable emission rate will be applied when an application is submitted for a permit to construct.

**Historical Note**

Sec. added by renum. and amd. 231.4, filed Sept. 15, 1994 eff. 30 days after filing.

**§ 231-1.5 Emission offsets.**

(a) An applicant for a permit to construct for an air contamination source project subject to this Subpart must provide emission offsets as part of the application. Emission offsets are required for any air contaminant for which the area is designated as a nonattainment area if the net increase in annual actual emissions of that contaminant exceeds the *de minimis* emission limits shown in section 231-1.9 of this Subpart.

(b) Emission offsets must be of the same contaminant. That is, only particulates can be used as offsets for new particulate emissions, only sulfur dioxide can be used as offsets for new sulfur dioxide emissions, and so on.

(c) Emission offsets must exceed the net increase in annual actual emissions from the air contamination source project.

(d) Only emission reductions which occurred within five years prior to the date of submittal of a complete application may be used as emission offsets.

(e) Emission offsets must be sufficient to provide a net air quality benefit when offsets of particulates, sulfur dioxide, carbon monoxide and/or nitrogen oxides are required. A net air quality benefit is achieved when the air quality impact of the applicable air contamination source project does not exceed the significant impacts shown in section 231-1.10 of this Subpart.

(f) Emission offsets must be real, permanent, and enforceable to the satisfaction of the commissioner.

(g) If the applicable air contamination source project is proposed in a nonattainment area for ozone, emission offsets of volatile organic compounds are required. These may be from any location within the same or a contiguous ozone nonattainment area in New York State.

(h) Only reductions which lower actual emissions from an air contamination source beyond levels prescribed by applicable emission standards may be used as emission offsets.

**Historical Note**

Sec. added by renum. and amd. 231.5, filed Sept. 15, 1994 eff. 30 days after filing.

**§ 231-1.6 Air quality impact evaluation.**

(a) An application for a permit to construct for an air contamination source project applicable to this Subpart must include an air quality impact evaluation.

(b) If the air contamination source project includes proposed emissions of particulates, sulfur dioxide, carbon monoxide and/or nitrogen oxides which exceed the *de minimis* emission limits shown in section 231-1.9 of this Subpart, the air quality impact evaluation must show that the combined impact of the proposed new emissions and the emission offsets will not exceed the significant impacts shown in section 231-1.10 of this Subpart.

(c) The applicant for a permit to construct an air contamination source project applicable to this Subpart must conduct the air quality impact evaluation, and prepare a report in accordance with procedures acceptable to the commissioner.

**Historical Note**

Sec. added by renum. and amd. 231.6, filed Sept. 15, 1994 eff. 30 days after filing.

**§ 231-1.7 Public participation.**

Local government and public participation will be in accordance with procedures established in Part 621—Uniform Procedures of this Title.

**Historical Note**

Sec. added by renum. 231.7, filed Sept. 15, 1994 eff. 30 days after filing.

**§ 231-1.8 Exemptions.**

Emission offsets are not required as a condition of approval of a permit to construct for the following air contamination source projects which are otherwise applicable to this Subpart.

- (a) conversion of an existing stationary combustion installation to the use of coal which has been required to discontinue use of petroleum and natural gas as its primary energy source pursuant to a Federal prohibition order or which is required to convert to coal by reason of a Federal order; or
- (b) resource recovery facilities.

**Historical Note**

Sec. added by renum. and amd. 231.8, filed Sept. 15, 1994 eff. 30 days after filing.

**§ 231-1.9 Table 1.**

*De minimis* emission limits.

<i>Air contaminant</i>	<i>De minimis emission limit (tons per year)</i>
Carbon monoxide	100
Nitrogen oxides	40
Sulfur dioxide	40
Particulates	25
Volatile organic compounds (for ozone nonattainment areas)	40
Lead	.6
Asbestos	0.007
Beryllium	0.0004
Mercury	0.1
Vinyl chloride	1
Fluorides	3
Sulfuric acid mist	7
Hydrogen sulfide	10
Total reduced sulfur	10
Reduced sulfur compounds	10

**Historical Note**

Sec. added by renum. and amd. 231.9, filed Sept. 15, 1994 eff. 30 days after filing.

**§ 231-1.10 Table 2.**

Significant impacts for nonattainment areas.

<i>Air contaminant</i>	<i>PPM</i>	<i>Significant impact Weight/Volume<sup>1</sup></i>
Sulfur dioxide		
Annual	0.0004	1.0 µg/m <sup>3</sup>
24-hour	0.0019	5.0 µg/m <sup>3</sup>
3-hour	0.009	25.0 µm <sup>3</sup>
Particulates		
Annual	—	1.0 µm <sup>3</sup>
24-hour	—	5.0 µm <sup>3</sup>
Nitrogen oxides		
Annual	0.0005	1.0 µm <sup>3</sup>
Carbon monoxide		
8-hour	0.45	0.5 mg/m <sup>3</sup>
1-hour	1.8	2.0 mg/m <sup>3</sup>

<sup>1</sup>Weight/volume values are referenced to 25°C and 760 mm mercury.

**Historical Note**

Sec. added by renum. and amd. 231.10, filed Sept. 15, 1994 eff. 30 days after filing.