

## SUBPART 231-3

### GENERAL PROVISIONS

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#### Historical Note

Subpart (§§ 231-3.1—231-3.11) filed Jan. 20, 2009 eff. 30 days after filing.

#### § 231-3.1 Statement of purpose.

The purpose of this Part is to establish the new source review (NSR) preconstruction, construction and operation requirements for new and modified facilities in a manner which furthers the policy and objectives of article 19 of the Environmental Conservation Law, and meets the plan requirements for nonattainment areas (part D) and prevention of significant deterioration (PSD) of air quality (part C) of subchapter I of the act.

#### Historical Note

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

#### § 231-3.2 Applicability.

On or after February 19, 2009, any owner and/or operator of a proposed new or modified facility, for which a complete application (as defined in section 621.2 of this Title) has not been submitted to the department, must comply with the provisions of this Subpart and Subparts 231-4 through 231-13 of this Part.

#### Historical Note

Sec. filed Jan. 20, 2009; ams. 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.

#### § 231-3.3 Exemptions.

(a) Any applicant for a proposed new or modified facility which is subject to this Part may petition the department and the administrator of the United States Environmental Protection Agency, in accordance with 42 U.S.C. section 7511a(f), for a determination that net air quality benefits are greater in the absence of reductions of oxides of nitrogen from the facility. In addition, this Part shall not apply to facilities in nonattainment areas within the ozone transport region if the administrator determines, in accordance with section 7511a(f), that reductions of NO<sub>x</sub> would not produce net ozone air quality benefits, or facilities in nonattainment areas outside the ozone transport region if the administrator determines, in accordance with section 7511a(f), that reductions of NO<sub>x</sub> would not contribute to attainment of the national ambient air quality standard for ozone in the area. To the extent that such a petition is granted by both the department and the administrator, consistent with the act, the requirements of this Part for the proposed new or modified facility with respect to emissions of NO<sub>x</sub> shall not apply.

(b) The facility is exempt from this Part if it is major based only on the addition of fugitive emissions and does not belong to one of the source categories listed in section 201-2.1(b)(21)(iii) of this Title.

(c) The provisions of Subparts 231-7 and 231-8 of this Part do not apply to a new or modified facility as follows:

- (1) the facility or emission source is portable and has previously received a permit under requirements equivalent to those contained in this Part, if:

- (i) the facility or emission source proposes to relocate and emissions of the facility or emission source at the new location would be for less than one year;
- (ii) the emissions from the facility would not exceed its emission limit(s) established in a permit;
- (iii) the emissions from the facility would impact no Federal class I area and no area where an applicable increment is known to be violated; and
- (iv) reasonable notice is given to the department prior to the relocation identifying the proposed new location and the probable duration of operation at the new location. Such notice must be given to the department not less than 10 days in advance of the proposed relocation unless a different time duration is previously approved by the department; or

(2) with respect to a particular regulated NSR contaminant, the facility is located in an area designated as nonattainment under section 107 of the act for that contaminant.

(d) For the purposes of Subparts 231-7 and 231-8 of this Part, if the emissions from a facility or modification would occur for less than one year and impact no Federal class I area, no area where an applicable increment is known to be violated, and would not contribute to known standards violations, then the requirements of Subparts 231-7 and 231-8 of this Part regarding source impact analysis and additional impact analyses, and section 231-12.3 (pre-application analysis for Subparts 231-7 and 231-8) of this Part, do not apply to a facility with respect to a particular regulated NSR contaminant.

(e) If an existing major facility owner or operator submits a Part 201 application that includes a proposed modification and a request for enforceable permit terms and conditions to restrict or cap facility wide emissions, in accordance with Subpart 201-7 of this Title, below applicable major facility thresholds, the modification is not subject to the requirements of this Part. The Part 201 State facility permit issued by the department must include all applicable requirements, including any control technology requirements and emission limitations that were in the title V permit.

(f) Any emission source which is to be operated for less than one year, is determined not to be a significant action in accordance with the procedures contained in Part 617 of this Title, and which has a project emission potential less than the applicable significant project threshold in table 3, table 4 or table 6 of Subpart 231-13 of this Part, is not subject to this Part.

**Historical Note**

Sec. filed Jan. 20, 2009; repealed, new added by renum. and amds. 231-3.4, 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.

**§ 231-3.4 General prohibitions.**

Construction and operation prohibited. No owner or operator of a proposed major facility, NSR major modification, or existing major facility which undertakes a significant modification but avoids NSR applicability through netting, shall be allowed to begin actual construction, commence operation, or operate such new facility or modification, as appropriate, without a permit which incorporates the requirements of this Part. This provision shall not affect any requirement under Part 201 of this Title for an owner and/or operator to obtain a permit or permit modification prior to beginning actual construction, commencing operation or operating a new or modified facility.

**Historical Note**

Sec. filed Jan. 20, 2009; renum. 231-3.3, new added by renum. 231-3.5, 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.

**§ 231-3.5 Source obligation.**

(a) The issuance of a permit does not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the State Implementation Plan.

(b) For the purposes of Subparts 231-7 and 231-8 of this Part only, at such time that a particular facility becomes a major facility, or a modification becomes a NSR major modification

solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the facility or modification otherwise to emit a regulated NSR contaminant, such as a restriction on hours of operation, then the requirements of Subparts 231-7 and 231-8 of this Part, as applicable, apply to the facility as though construction had not yet commenced on the facility.

(c) Any owner or operator of a facility that proposes a project that involves a physical change or change in the method of operation that the owner or operator determines would be followed by a facility emissions increase that exceeds baseline actual emissions and that equals or exceeds any of the significant project thresholds in Subpart 231-13 of this Part, table 3, 4 or 6, must notify the department in writing of the proposed project prior to implementing the change if the owner or operator determines that the project does not constitute a modification because all the emission increases are attributable to independent factors in accordance with section 231-4.1(b)(41)(i)(c) of this Part. The notification shall include the following:

- (1) a description of the change;
- (2) the calculation of the projected emissions increase;
- (3) the proposed date of the change; and
- (4) an explanation of the factual basis for the conclusion that none of the projected emission increases are attributable to the proposed project.

**Historical Note**

Sec. filed Jan. 20, 2009; renum. 231-3.4, new added by renum. and amds. 231-3.6, 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.

**§ 231-3.6 Permits.**

(a) Permit applications for proposed new and modified facilities subject to this Part will be processed in accordance with Parts 201 and 621 of this Title.

(b) In accordance with section 165(c) of the act, the department will make a final determination on an application submitted pursuant to Subpart 231-7 or Subpart 231-8 of this Part within one year of filing a complete application as defined in section 621.2 of this Title.

**Historical Note**

Sec. filed Jan. 20, 2009; amended adoption filed Feb. 3, 2009; renum. 231-3.5, new added by renum. and amds. 231-3.7, 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.

**§ 231-3.7 Requirement to commence construction.**

The existence of a valid permit shall not be construed as authorizing construction if construction is not commenced within 18 months after the date of permit issuance, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time as determined by the department. The department may grant one extension for a period not to exceed 18 months upon a satisfactory showing that an extension is justified. A permit shall become subject to revocation or modification if construction is not commenced and completed as provided in this section. This provision does not apply to the time period between the completion and start of construction, of the approved phases, of a phased construction project; each phase must commence construction within 18 months of its projected and approved commencement date.

**Historical Note**

Sec. filed Jan. 20, 2009; renum. 231-3.6, new added by renum. 231-3.8, 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.

**§ 231-3.8 Facility shakedown period.**

Upon commencement of operation, as defined in section 231-4.1(b)(12) of this Part, of a major facility or new or modified emission source(s) at an existing facility, the owner or operator is al-

lowed a shakedown period for such major facility or modified emission source(s) according to the following provisions:

- (a) The shakedown period shall not exceed 180 days from the date of commencement of operation. The department may specify a shakedown period of less than 180 days in a permit.
- (b) The total mass emissions during the shakedown period must be quantified, in a manner approved by the department, and are to be included in the calculation demonstrating compliance with the permitted annual limit in tons per year (tpy) of the facility or emission source(s).
- (c) Emission limits other than annual emission limitations do not apply to a major facility or new or modified emission source(s) at an existing facility during the shakedown period. However, the owner or operator must make all reasonable efforts to minimize emissions during the shakedown period.

**Historical Note**

Sec. filed Jan. 20, 2009; renum. 231-3.7, new added by renum. and amds. 231-3.9, 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.

**§ 231-3.9 Circumvention.**

- (a) An owner or operator of a facility may not circumvent this Part by causing or allowing a pattern of ownership or development, including the phasing, staging, delaying, or engaging in incremental construction at a facility which, except for the pattern of ownership or development, would otherwise require a permit.
- (b) The sale or other transfer of a facility to a new owner or operator does not relieve the new owner or operator from the requirement to obtain a permit and operate the facility in conformance with the requirements of this Part.

**Historical Note**

Sec. filed Jan. 20, 2009; renum. 231-3.8, new added by renum. 231-3.10, 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.

**§ 231-3.10 Severability clause.**

Each section or portion thereof, of this Part shall be deemed severable, and in the event that any section, or portion thereof, of this Part is held to be invalid, the remainder of this Part will continue in full force and effect.

**Historical Note**

Sec. filed Jan. 20, 2009; renum. 231-3.9, new added by renum. 231-3.11, 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.

**§ 231-3.11**

**Historical Note**

Sec. filed Jan. 20, 2009; renum. 231-3.10, 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.