

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of Climate, Air, & Energy, Deputy Commissioner  
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MAR 23 2021

Mr. Walter Mugdan  
Acting Regional Administrator  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 26<sup>th</sup> Floor  
New York, NY 10007-1866

Dear Acting Administrator Mugdan:

On behalf of the Governor of the State of New York, I am submitting for approval by the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to incorporate revisions to Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 201, Part 200, and Part 212 as adopted on January 19, 2021.

The New York State Department of Environmental Conservation (Department) adopted revisions to its Operating Permitting Program (OPP). The OPP sets forth the regulatory requirements and procedures to allow owners and operators of an air contamination source to apply for and obtain a permit or registration from the Department for the construction and operation of the source in New York. This rulemaking revised Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) Part 201, "Permits and Registrations," to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. This rulemaking included attendant revisions to 6 NYCRR Part 200, "General Provisions," and Part 212, "Process Operations."

A "Notice of Proposed Rulemaking" was published in the Environmental Notice Bulletin (ENB) and the New York State Register on April 29, 2020 and a public comment period was held for the proposed SIP revision. Due to the unprecedented nature of COVID-19, Governor Cuomo issued a PAUSE Order directing nonessential meetings/gatherings to be suspended or cancelled;<sup>1</sup> pursuant to these directives, the Department did not schedule or hold any public hearings for this rulemaking.

The following documents are enclosed with this proposed SIP revision:

1. Express Terms for 6 NYCRR Part 201, "Permits and Registrations," Part 200, "General Provisions," and Part 212, "Process Operations," as proposed on April 29, 2020;

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<sup>1</sup> See Executive Order 202 and subsequent additions, including Executive Order 202.15 which specifically addressed the suspension of public hearing requirements.



Department of  
Environmental  
Conservation

2. Notice of proposed rulemaking as published in the ENB and New York State Register on April 29, 2020;
3. Assessment of Public Comments for all comments received on the proposed rulemaking;
4. Certificate of Adoption dated January 20, 2021;
5. Express Terms for 6 NYCRR Part 201, Part 200, and Part 212 as adopted on January 20, 2021; and
6. Notice of Adoption published in the ENB and New York State Register on February 10, 2021.

If you have any questions or concerns, please contact Mr. Christopher LaLone, Acting Director, Division of Air Resources at (518) 402-8452.

Sincerely,



J. Jared Snyder  
Deputy Commissioner  
Office of Climate, Air & Energy

Enclosures

c: R. Ruvo, EPA Region 2  
C. LaLone

## PART 201

### PERMITS AND REGISTRATIONS

(Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, [3-0303,] 19-0103, 19-0105, [19-0107,] 19-0301, 19-0302, 19-0303, 19-0305, [19-0306, ]19-0311, 70-0109, 71-2103, [and] 71-2105[; 40 CFR part 70; United States Code, Section 7661(b); Federal Clean Air Act, Section 160-169, 171-193 (42 U.S.C. Sections 7470-7479; 7501-7515)] and Sections 501-507 of the Clean Air Act)

## SUBPART 201-1

### GENERAL PROVISIONS

#### Section 201-1.1 Purpose and applicability.

(a) ‘Purpose’. The purpose of this Part is to require owners and operators of air contamination sources to obtain a permit or registration from the department for the construction and operation of such sources.

(b) ‘Applicability’. This Part applies throughout New York State. Except as specifically described in Subpart 201-3 of this Part, owners and operators of air contamination sources must comply with this Part. Owners or operators of major stationary sources subject to Subpart 201-6 of this Part must obtain a title V facility permit. Owners or operators of other emission sources must either register, pursuant to Subpart 201-4 of this Part, or obtain a State facility permit pursuant to Subpart 201-5 of this Part. Owners or operators of emission sources subject to applicable requirements, or the requirement to obtain a title V facility permit, may request limitations on such source’s potential to emit regulated air pollutants in accordance with Subpart 201-4 or 201-7 of this Part, in order to avoid such applicable requirements. Subpart 201-8 of this Part provides for the issuance of general permits for stationary sources subject to this Part, except for affected sources under the Federal Acid Rain Program, unless otherwise provided in regulations promulgated under title IV of the act.

## Section 201-1.2 Unpermitted emission sources.

(a) Except as otherwise provided by this Part, construction or operation of a new, modified or existing air contamination source without a registration or permit issued pursuant to this Part is prohibited.

(b) If an existing facility or emission source was subject to the permitting requirements of this Part at the time of construction or modification, and the owner or operator failed to apply for a permit or registration [for such emission source] as described in this Part, the owner or operator must apply for a permit or registration in accordance with the provisions of this Part. The facility or emission source is subject to all regulations that were applicable to it at the time of construction or modification and any subsequent requirements applicable to existing emission sources. [then the following provisions apply:

(i) The owner or operator must apply for a permit for such emission source or register the facility in accordance with the provisions of this Part.

(ii) The emission source or facility is subject to all regulations that were applicable to it at the time of construction or modification and any subsequent requirements applicable to existing sources or facilities.]

## Section 201-1.3 Change in ownership.

A title V facility permit, State facility permit, general permit or registration is valid only for the emission unit(s), owner or operator, facility, mode of operation and permit conditions stated in the application, permit or registration. The owner or operator can transfer the permit or registration to a new owner or operator if the mode of operation and emissions do not change. Permit transfers are subject to the procedures established under Part 621 of this Title. The transfer of a registration is subject to the procedures set forth in section 201-4.4 of this Part.

Section 201-1.4 Malfunctions and start-up/shutdown activities.

(a) The facility owner or operator shall take all necessary and appropriate actions to prevent the emission of air pollutants that result in contravention of any applicable emission standard during periods of start-up, shutdown, or malfunction.

(b) The facility owner or operator shall compile and maintain records of all equipment [malfunctions,] maintenance[, or] and start-up/shutdown activities when they [can be] are expected to result in an exceedance of any applicable emission standard, and shall submit a report of such activities to the department when [requested to do so, or when so required by a condition of a permit issued for the corresponding air contamination source] required by a permit condition or upon request by the department. Such reports shall state whether [any violations] an exceedance occurred and[, if so, whether they were] if it was unavoidable, include the time, frequency and duration of the [maintenance and/or start-up/shutdown activities] exceedance, and an estimate of the emission rates of any air contaminants released. Such records shall be maintained for a period of at least five years and made available for review to department representatives upon request. Facility owners or operators subject to continuous [stack] monitoring and quarterly reporting requirements need not submit additional reports [for equipment maintenance or start-up/shutdown activities for the facility] of exceedances to the department.

(c) In the event that [emissions of air contaminants in excess of] air contaminant emissions exceed any applicable emission standard [in this Subchapter occur] due to a malfunction, the facility owner or operator shall [compile and maintain records of the malfunction and] notify the department as soon as possible during normal working hours, but not later than two working days after becoming aware that the malfunction occurred. In addition, the facility owner or operator shall compile and maintain a record of all malfunctions. Such records shall be maintained at the facility for a period of at least five years and must be made available to the

department upon request. When requested by the department, the facility owner or operator shall submit a written report to the department describing the malfunction, the corrective action taken, [identification of] the air contaminants emitted, and [an estimate of] the resulting estimated emission rates and/or opacity.

(d) The department may also require the facility owner or operator to include, in reports described under subdivisions (b) and (c) of this section, an estimate of the maximum ground level concentration of each air contaminant emitted and the effect of such emissions.

(e) A violation of any applicable emission standard resulting from start-up, shutdown, or malfunction conditions at a permitted or registered facility may not be subject to an enforcement action by the department and/or penalty if the department determines, in its sole discretion, that such a violation was unavoidable. The actions and recordkeeping and reporting requirements listed above must be adhered to in such circumstances.

#### Section 201-1.5 Emergency defense.

An emergency, as defined in Subpart 201-2 of this Part, constitutes an affirmative defense to penalties sought in an enforcement action brought by the department for noncompliance with emission limitations or permit conditions for all facilities in New York State.

(a) The affirmative defense of an emergency shall [be demonstrated] demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

(1) an emergency occurred and that the facility owner or operator can identify the cause(s) of the emergency;

(2) the equipment at the [permitted facility causing the emergency was at the time] facility was being

properly operated and maintained;

(3) during the period of the emergency the facility owner or operator took all reasonable steps to minimize the levels of emissions that exceeded the applicable emission standards, or other requirements in the permit; and

(4) the facility owner or operator notified the department within two working days after the event occurred. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and any corrective actions taken.

(b) In any enforcement proceeding, the facility owner or operator seeking to establish the occurrence of an emergency has the burden of proof.

(c) This provision is in addition to any emergency or [upset] malfunction provision contained in any applicable requirement.

#### Section 201-1.6 Public participation.

Local and Federal government, affected State and public participation in permit proceedings will be provided for in accordance with procedures established in Part 621[, Uniform Procedures,] of this Title unless otherwise provided for in this Part.

#### Section 201-1.7 Recycling and salvage.

Where practical, the owner or operator of an air contamination source shall recycle or salvage air contaminants collected in an air cleaning device according to the requirements of this Title.

Section 201-1.8 Prohibition of reintroduction of collected contaminants to the air.

No person shall unnecessarily remove, handle, or cause to be handled, collected air contaminants from an air cleaning device for recycling, salvage or disposal in a manner that would reintroduce them to the outdoor atmosphere.

Section 201-1.9 Delegation of program.

(a) The department may delegate permitting and/or enforcement of this Part and other Parts of this Title to a city or county. In order for the city or county to qualify for delegation, the department must:

(1) determine that the city or county has:

(i) enacted local laws, ordinances and regulations consistent with the relevant requirements of this Title; and

(ii) the staff resources and expertise necessary to implement the program to be delegated.

(2) obtain any approval necessary for such delegation from the administrator; and

(3) publish notice of the approved delegation in the *Environmental Notice Bulletin*. The delegation shall become effective 30 days following the date of publication.

(b) The department shall withdraw delegation when a city or county program no longer complies with the requirements of this section, and the city or county fails to take corrective action within 30 days of being so advised by the department.



(1) Such circumstances for the department to withdraw delegation include the following:

- (i) failure of the city or county to promulgate new laws, ordinances and regulations as necessary to be consistent with the relevant requirements of this Title;
- (ii) the city or county fails to exercise sufficient control over activities required to be regulated pursuant to the delegation, including failure to issue permits;
- (iii) repeated issuance of permits that do not comply with the relevant requirements of this Part;
- (iv) failure to comply with the public participation requirements of this Title;
- (v) failure to act on violations of permits or other delegated program requirements;
- (vi) failure to seek adequate enforcement penalties or to collect administrative fines when imposed; and
- (vii) failure to inspect and monitor activities subject to delegation.

(2) Notice of the department's withdrawal of delegation shall be printed in the 'Environmental Notice Bulletin' and the delegation will cease to be in effect 30 days following publication of such notice.

#### Section 201-1.10 Public access to recordkeeping.

(a) Where facility owners or operators keep records pursuant to compliance with requirements of this Part, the department will make such records available to the public upon request in accordance with Part 616 of this Title. Facility owners or operators must submit the records required to comply with the request within 60

working days of written notification by the department of receipt of the request.

(b) For facilities subject to Subpart 201-6 of this Part, the department will make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the act, except for information entitled to confidential treatment pursuant to Part 616 of this Title or section 114(c) of the act.

#### Section 201-1.11 Temporary emission sources.

(a) The owner or operator of a facility operating a temporary emission source, as defined in Subpart 201-2 of this Part, is not required to obtain or modify a permit or registration for that source, as otherwise required by this Part, if the following conditions are met:

(1) the owner or operator of the temporary emission source notifies the department of the intent to operate a temporary emission source at least 10 days in advance of such operation;

(2) the emission source is operated in compliance with all applicable requirements[ and all Parts of this Chapter];

(3) the owner or operator of the facility where the temporary emission source is located maintains records on-site, for a period of at least five years, indicating the dates of operation of each temporary emission source;

(4) total emissions from the emission source do not exceed, or cause an existing permitted or registered facility to exceed, any of the following threshold levels:

(i) the major facility thresholds described in [section] Paragraph 201-2.1(b)(21) of this Part;

(ii) an emissions cap established pursuant to [Subpart] Subparts 201-4 or 201-7 of this Part; or

(iii) the significant project thresholds described in Part 231 of this Title at an existing major facility;  
and

(5) the temporary emission source is not an affected source, as defined in [section] paragraph 201-2.1(b)(3) of this Part.

(b) The department may require the owner or operator of a temporary emission source to obtain an air permit or registration for the location at which the source is operated if it determines that the emission source does not or cannot meet the requirements of this section or any other requirements of this Chapter.

Section 201-1.12 Suspension, reopening, [reissuance, modification or revocation] renewal, modification, revocation, and enforcement of air permits.

(a) The department may suspend, reopen, [reissue] renew, modify or revoke a permit in accordance with the procedures and provisions of Part 621 of this Title.

(b) [The owner or operator of any air contamination source or air cleaning device shall operate and maintain such source or device in compliance with all applicable requirements, permit conditions, and other Parts of this Title and existing laws.] Failure [of such person] to [properly] operate and maintain [the sources and/or devices] a permitted emission source or air cleaning device in compliance with all applicable requirements, permit conditions, other Parts of this Title and existing laws shall be grounds for an enforcement action and sufficient reason for the department to revoke or deny a permit or registration in accordance with the procedures and provisions of Part 621 of this Title.

#### Section 201-1.13 Access to regulated facilities.

Department representatives must be granted access, during normal operating hours, to any facility regulated by this Part, including facilities that are not required to obtain a permit or registration pursuant to Subpart 201-3 of this Part, for the purpose of determining compliance with this and any other State [and] or Federal air pollution [control requirements, regulations or laws] control requirement, regulation, or law.

#### Section 201-1.14 Certificates to operate

The owner or operator of an existing facility operating under a certificate to operate and/or permit to construct is required to apply to the department for a registration or permit, as described in this Part, within 90 days of receiving written notification [by] from the department.

#### Section 201-1.15 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. Up to an 18-month extension may be granted by the department upon a showing of good cause in a written request by the facility owner or operator. The department may suspend, modify or revoke the permit or registration pursuant to Part 621 of this Title if construction [or modification] has not commenced within 18 months of issuance of such permit or registration, or construction has been discontinued for a period of more than 18 months at any point after issuance of such permit or registration.

#### Section 201-1.16 Research and development activities

(a) The owner or operator of a facility conducting one or more research and development activities is not required to obtain or modify a permit or registration for those activities, as otherwise required by this part, if the following conditions are met:

(1) The research and development activities do not produce commercial quantities of materials or products for sale;

(2) The research and development activities are exhausted to an appropriate control device;

(3) The facility owner or operator maintains a record of each research and development activity conducted at the facility, including:

(i) The quantity of each material used on a monthly basis;

(ii) The material safety data sheet for each material used;

(iii) 12-month rolling total emissions calculations for each air contaminant emitted to the outdoor atmosphere; and

(4) Total emissions from research and development activities do not exceed, or cause an existing permitted or registered facility to exceed, any of the following threshold levels:

(i) The major facility thresholds described in Paragraph 201-2.1(b)(21) of this Part;

(ii) An emissions cap established pursuant to Subpart 201-4 or 201-7 of this Part; or

(iii) The significant project thresholds as described in Part 231 of this Title at an existing major facility.

(b) Records kept pursuant to Paragraph 201-1.16(a)(3) of this Section must be maintained at the facility for a period of at least five years and must be made available to the Department upon request.

(c) The Department may require the owner or operator of a facility conducting research and development activities to obtain an air permit or registration for those activities if it determines that the activities do not or cannot meet the requirements of this Section or any other requirements of this Title.

## SUBPART 201-2

### DEFINITIONS

#### Section 201-2.1 Definitions.

(a) For the purposes of this Part, the general definitions of Part 200 of this Title apply.

(b) For the purposes of this Part, the following definitions also apply:

(1) '12-month period'. A period of 12 consecutive months determined on a rolling basis where a new 12-month period begins on the first day of each calendar month.

(2) 'Actual emissions'. Those emissions resulting from normal daily operations, verifiable by operating records or other compliance monitoring activities, averaged over the prior two years or some other more representative time interval, justified by the applicant to the department's satisfaction.

(3) 'Affected source'. A stationary source that includes one or more fossil fuel fired combustion units ("affected" units) that are subject to emission reduction requirements or limitations established in accordance with the Federal Acid Rain Program under title IV of the act.

(4) 'Affected states'. All states and tribal lands:

(i) whose air quality may be affected and that are contiguous to the state where the major stationary source is located for which a title V facility permit, permit modification or permit renewal is being proposed; or

(ii) that are within 50 miles of such major stationary source.

(5) 'Applicable requirement'. A standard or other requirement in State or Federal regulations required under the act as it applies to an emission unit or emission source, including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance of a permit but have future effective compliance dates. Applicable requirements that are in Federal regulations are listed in Part 200, Table 200.10 of this Title. Applicable requirements generally include the following:

(i) any standard or other requirement approved in the New York State Implementation Plan (SIP) that is effective at the time of permit issuance;

(ii) any term or condition of any [preconstruction permits] permit issued pursuant to the requirements of title I of the act, including the Federal Prevention of Significant Deterioration (PSD) Program or new source review in nonattainment areas[,] pursuant to Part 231 of this Title, that are required under the Clean Air Act or are taken by a source to avoid an applicable requirement;

(iii) any standard or requirement promulgated to control emissions under section 111 of the act (including the New Source Performance Standards or NSPS);

(iv) any standard or other requirement promulgated under section 112 of the act, including any requirement to control the accidental release of regulated substances, pursuant to section 112(r)(7) of the act;

(v) any standard, regulation or other requirement of the Acid Rain Program under title IV of the act;

(vi) any compliance assurance requirements established pursuant to section 504(b) or section 114(a)(3) of the act;

(vii) any standard, regulation or other requirement governing [municipal] solid waste incineration and hospital/medical/infectious waste incineration promulgated under section 129 of the act;

(viii) any standard, regulation or other requirement promulgated to protect stratospheric ozone under title VI of the act unless the administrator has determined that such requirements need not be contained in a permit issued under this Part;

(ix) any standard or other requirement of the program to control air pollution from outer continental shelf facilities under section 328 of the act;

(x) any national ambient air quality standard, increment, or visibility requirement under title 1, part C of the act, but only as it would apply to portable emission sources;

(xi) a standard or other requirement for consumer and commercial products, under section 183(e) of the act; and

(xii) a standard or other requirement for tank vessels, under section 183(f) of the act.

(6) 'Area source'. For the purposes of title V permitting, any stationary source of hazardous air pollutants that is not a major stationary source. For the purposes of this Part, the term *area source* shall not include motor vehicles or non-road vehicles.



(7) 'Certificate of representation'. The completed and signed submission required by 40 CFR part 72.20 for certifying the appointment of a designated representative of an affected source or a group of identified affected sources authorized to represent the owners and operator(s) of such sources and of the affected units of such source(s) with regard to matters under the Acid Rain Program.

(8) 'Compliance assurance monitoring'. When required under the act, the methodology used by an owner or operator to detect deviations with sufficient accuracy, precision, reliability, frequency and timeliness in order to determine compliance during a reporting period. Compliance assurance monitoring is used for the purpose of demonstrating compliance with the federally enforceable terms and conditions of a title V facility permit and shall meet the requirements promulgated pursuant to sections 504(b) and 114(a)(3) of the act.

(9) 'Construction'. The initiation of physical on-site construction activities which are of a permanent nature excluding site clearing and excavation. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures.

(10) [*Draft permit*. The version of a permit offered for public and affected State review under this Part and Part 621 of this Title.] 'Designated representative.' A responsible natural person or official authorized by the owner and operator of an affected source and of all affected units at such source as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR part 72, to represent and legally bind each owner and operator, as a matter of Federal law, in matters pertaining to the Acid Rain Program. Whenever the term responsible official is used in this Part or in any other regulations implementing title V of the act, it shall be deemed to refer to the designated representative with regard to all matters under title IV of the act.

(11) [*Designated representative*. A responsible natural person or official authorized by the owner and operator of an “affected source” and of all affected units at such source as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR part 72, to represent and legally bind each owner and operator, as a matter of Federal law, in matters pertaining to the Acid Rain Program. Whenever the term *responsible official* is used in this Part or in any other regulations implementing title V of the act, it shall be deemed to refer to the “designated representative” with regard to all matters under title IV of the act.] ‘Draft permit.’ The version of a permit offered for public and affected State review under this Part and Part 621 of this Title.

(12) ‘Emergency’. Any [situation] event arising from sudden and reasonably unforeseeable [events] circumstances beyond the control of the owner or operator of a facility, [including acts of God, which requires immediate corrective action to restore normal operation and] which causes [the] an emission source to exceed a [technology-based requirement under the permit or State-established emission limitations, due to unavoidable increases in emissions attributable to the situation.] specific permit condition or an applicable requirement. An emergency shall not include [situations] events caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(13) ‘Emission cap’. A federally enforceable limit, term, or condition imposed by a permit, or through regulation, that restricts emissions for the purpose of avoiding an applicable requirement to which the stationary source would otherwise be subject, to establish enforceable emission reductions or to avoid the requirement to obtain a title V facility permit. An emission cap can be facility-wide or limited to one or more emission units.

(14) ‘Emission[s] unit’.

(i) Any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant. An emission unit is represented as a grouping of processes for any one of the following:

(‘a’) a single emission point; or

(‘b’) a group of emission points provided that the appropriate compliance assurance methods can be demonstrated to the satisfaction of the department; or

(‘c’) a facility-wide process that cannot be reasonably associated with one emission point or a group of emission points.

(ii) In defining an emission unit, the following applies:

(‘a’) A defined emission source can only be cited in one emission unit.

(‘b’) A defined emission point can only be cited in one emission unit.

(‘c’) A defined emission point can only be cited in one issued permit.

(‘d’) A defined emission unit can only be cited in one issued permit.

This term is not meant to alter or affect the definition of the term ‘unit’ for the purpose of regulating stationary sources subject to title IV of the act.

(15) ‘Final permit’. The permit issued by the department that has been subject to all applicable review

procedures required by this Title.

(16) [‘Fossil fuel’. Natural gas, petroleum, coal, and any form of solid, liquid or gaseous fuel derived from such material for the purpose of creating useful heat.] ‘Reserved’.

(17) [‘Furnace’. Any device (excluding internal combustion engines and gas turbines) that combusts fossil fuel and/or wood for any purpose and whose emissions to the outside atmosphere only include the products of combustion from fossil fuels and/or wood.] ‘Reserved’.

(18) ‘General permit’. A permit that may be used to authorize the construction and/or operation of numerous uniform or similar emission source types or categories as an alternative to individual project-specific permitting. General permits may authorize a whole facility or one or more processes or emission units at a facility, as described in Subpart 201-8 of this Part.

(19) ‘Generally available control technology or GACT’. Control techniques that are generally available for the reduction and minimization of emissions through the application of control equipment, work practices, efficient process design, or best management practices, considering environmental, energy and economic impact.

(20) ‘Laboratory operations’. A workplace where small quantities of chemicals are used for research and development, analytical testing or other support services. Equipment in laboratory operations is designed such that it is easily and safely handled by one person. [Exhaust equipment such as hoods, elephant trunks and lab scale vacuum aspirator systems are used for capturing gases and/or particulate from equipment such as, but not limited to, atomic absorption, gas chromatographs, liquid pouring or mixing stations, reactors and heat sources.]

(21) ‘Major stationary source or major source or major facility’. Any stationary source or any group of stationary sources, any source or any group of sources, or any facility or any group of facilities, that is located on one or more contiguous or adjacent properties and is under common control, belonging to a single major industrial grouping and that are described in subparagraph (i), (ii), (iv), or (v) of this paragraph. For the purposes of this definition, a stationary source, source, or facility or group of stationary sources, sources, or facilities shall be considered part of a single industrial grouping if all of the air pollutant or air contaminant emitting activities at such stationary source, source, or facility, or any group of stationary sources, sources, or facilities on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code), as described in the ‘Standard Industrial Classification Manual’, 1987. Stand alone or common wall residential housing units including compatible commercial activities, which are not regulated by other applicable requirements, where the potential to emit for individual associated combustion or emission sources are below major stationary source, major source, or major facility applicability thresholds (notwithstanding that the sum of these individual combustion or emission sources could exceed major stationary source, major source, or major facility applicability thresholds) shall not be considered a major stationary source, major source, or major facility.

(i) Except as otherwise expressly provided in this paragraph, a stationary source, source, or facility that directly emits or has the potential to emit, 100 tons per year (tpy) or more of any air pollutant or air contaminant regulated under the act except for greenhouse gases (including any stationary source, source or facility which emits only fugitive emissions, of any such pollutant or contaminant, as determined through regulation by the administrator). [For greenhouse gases, a stationary source, source, or facility that directly emits or has the potential to emit 100 tpy or more of greenhouse gases, and 100,000 tpy or more of CO<sub>2</sub> equivalents.] Fugitive emissions shall not be

considered in determining whether a stationary source, source, or facility is major unless it belongs to one of the source categories identified in subparagraph (iii) of this paragraph.

(ii) For hazardous air pollutants other than radionuclides, a stationary source, source, or facility that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant as defined in Part 200 of this Title (including any fugitive emissions of such pollutant), 25 tpy or more of any combination of such hazardous air pollutants (including any fugitive emissions of such pollutants), or such lesser quantity as the administrator may establish by rule. For radionuclides the meaning of major stationary source, major source, or major facility shall be specified by the administrator by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or oil and gas production well (with its associated equipment) and the emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major stationary sources, major sources, or major facilities.

(iii) source category list:

(‘a’) coal cleaning plants (with thermal dryers);

(‘b’) kraft pulp mills;

(‘c’) portland cement plants;

(‘d’) primary zinc smelters;

(‘e’) iron and steel mills;

(‘f’) primary aluminum ore reduction plants;

(‘g’) primary copper smelters;

(‘h’) municipal incinerators capable of charging more than 50 tons of refuse per day;

(‘i’) hydrofluoric, sulfuric, or nitric acid plants;

(‘j’) petroleum refineries;

(‘k’) lime plants;

(‘l’) phosphate rock processing plants;

(‘m’) coke oven batteries;

(‘n’) sulfur recovery plants;

(‘o’) carbon black plants (furnace process);

(‘p’) primary lead smelters;

(‘q’) fuel conversion plants;

(‘r’) sintering plants;

(‘s’) secondary metal production plants;

(‘t’) chemical process plants (excluding ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);

(‘u’) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(‘v’) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(‘w’) taconite ore processing plants;

(‘x’) glass fiber processing plants;

(‘y’) charcoal production plants;

(‘z’) fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(‘aa’) all other source categories regulated by a standard under section 111 or section 112 of the act.



(iv) A stationary source, source, or facility that is located in a nonattainment area or an attainment area of the State within the ozone transport region where the stationary source, source, or facility potential to emit equals or exceeds the emissions thresholds (in tpy) identified in clause ('a'), ('b'), ('c'), ('d'), or ('e') of this subparagraph. Fugitive emissions shall not be considered in determining whether a stationary source, source, or facility is major unless it belongs to one of the source categories listed in subparagraph (iii) of this paragraph.

(a) For areas classified as marginal or moderate ozone nonattainment, any stationary source, source, or facility with the potential to emit 100 tpy or more of oxides of nitrogen (NO<sub>x</sub>) or 50 tpy or more of volatile organic compounds (VOC).

(b) In the New York City metropolitan area or the Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, or Woodbury, any stationary source, source, or facility with the potential to emit 25 tpy or more of NO<sub>x</sub> or VOC.

(c) For attainment areas of the State within the ozone transport region, any stationary source, source, or facility with the potential to emit 100 tpy or more of NO<sub>x</sub> or 50 tpy or more of VOC.

(d) For areas classified as moderate PM-10 nonattainment, any stationary source, source, or facility with the potential to emit 100 tpy or more of PM-10.

(e) For areas classified as PM-2.5 nonattainment, any stationary source, source, or facility with the potential to emit 100 tpy or more of PM-2.5.

(v) For purposes of determining the applicability of Part 231 of this Title with respect to prevention of significant deterioration (PSD) requirements only, a stationary source, source, or facility located in an attainment area of the State where the stationary source, source, or facility potential to emit of any attainment contaminant regulated under the act, except for greenhouse gases, equals or exceeds 250 tpy, or equals or exceeds 100 tpy if the stationary source, source, or facility belongs to one of the source categories listed in clauses (iii)(‘a’) through (‘z’) of this paragraph. [For greenhouse gases, a stationary source, source, or facility that directly emits or has the potential to emit 100 or 250 tpy or more of greenhouse gases, as applicable, and 100,000 tpy or more of CO<sub>2</sub> equivalents.] Fugitive emissions shall not be considered in determining whether a stationary source, source, or facility is major unless it belongs to one of the source categories listed in subparagraph (iii) of this paragraph.

(22) ‘Malfunction’. Any sudden, infrequent, and not reasonably preventable [and unavoidable] failure of an air cleaning device or air contamination source to operate in compliance with all applicable Parts of this Title, [and shall not include] not including failures that are caused entirely or partially by [poor] improper maintenance, careless operation, or other preventable conditions.

(23) [‘Permit shield’. A provision the department includes in a Title V facility permit that indicates that compliance with conditions of the permit shall be deemed compliance with the applicable requirements of the act as of the date of permit issuance, provided that the applicable requirements are specifically identified in the permit, or the department determines, in writing, when approving the permit, that other requirements specifically identified do not apply to the facility.] Reserved.

(24) ‘Portable emission source’. An emission source that can be carried or moved [from one location (*i.e.*, any single site at a building, structure, facility, or installation) to another]. Indicators of portability include, but are not limited to, wheels, skids, carrying handles, dolly or trailer. A portable emission source

shall be treated as a stationary emission source if it remains at the same facility for 12 consecutive months.

(25) ‘Proposed permit’. The version of a permit that the department proposes to issue and forwards to the administrator for review.

(26) ‘Renewal’. The reissuance, recertification or extension of any permit or registration for previously approved activities which will be continued [on the same site] without material change at the same facility.

(27) ‘Research and development activities’. The primary purpose of such activities is to conduct research and development into processes and products, where such activities are conducted under the close supervision of technically trained personnel. Research and development activities do not include activities whose primary purpose is to produce commercial quantities of materials.

(28) ‘Responsible official’. A president, vice president, secretary, treasurer, general partner, proprietor, principal executive officer, ranking elected official, or any other person who performs policy or decision making functions and is authorized to legally bind a corporation, partnership, sole proprietorship, or government entity which owns or operates a facility that is subject to the provisions of this Part. Whenever the term ‘responsible official’ is used in this Part or in any other regulations implementing title V of the act, it shall be deemed to refer to the “designated representative” with regard to all matters under title IV of the act.

(29) ‘Temporary emission source’.

(i) [an] An emission source that is transient in nature and will be operated at a facility for a single period of less than 90 consecutive days commencing from the first day of operation to the date of removal; or

(ii) [an] An emission source that will be constructed and operated for less than 30 days per calendar year and then removed.

[(30) 'Title V facility permit'. Permit for a facility or a defined area source, group, or category of emission units at a facility that is issued by the department pursuant to Subpart 201-6 of this Part.

(31) 'Title V facility permit modification'. A revision to a title V facility permit that meets the requirements of section 201-6.6 (c) and (d) of this Part and Part 621 of this Title.

(32) 'Title V facility permit revision'. Any modification or administrative amendment to a title V facility permit as defined in Subpart 201-6 of this Part.]

## SUBPART 201-3

### PERMIT EXEMPT AND TRIVIAL ACTIVITIES

#### Section 201-3.1 Applicability.

(a) Except as provided in [subdivision] subdivisions (c) and (d) of this section, [the owner or operator of] an emission source listed as an exempt or trivial activity in this Subpart is exempt from the registration and permitting provisions of Subparts 201-4, 201-5, and 201-6 of this Part. This does not mean that these activities are exempted from other applicable requirements or from applicable registration and/or permitting requirements of local air pollution control agencies.

(b) Unless otherwise provided for in this Chapter, emissions from exempt [and trivial] activities must be included in potential to emit calculations when determining whether [an] a facility or emission source is subject to:

(1) title V facility permitting pursuant to Subpart 201-6 of this Part; and/or

(2) new source review pursuant to Part 231 of this Title.

(c) If the total potential to emit [for all] from one or more exempt [and trivial] activities at a facility exceeds, or causes the facility to exceed, the major facility threshold, as defined in Subpart 201-2 of this Part, [the facility is both subject to the provisions of Subpart 201-6 of this Part and no longer considered exempt or trivial for permitting purposes.] those activities are no longer considered to be exempt from permitting. Such activities are still considered to be exceptions as described in Part 212 of this Chapter.

(d) If physical and/or operational restrictions are required to maintain the total potential to emit [for] from one or more of the listed exempt [and trivial] activities below the title V applicability thresholds described in

Subpart 201-6 of this Part, or new source review requirements described in Part 231 of this Title, the [activity is no longer] activities are not considered exempt [or trivial] for permitting purposes. Such activities are still considered to be exceptions as described in Part 212 of this Chapter.

#### Section 201-3.2 Exempt activities.

(a) The owner or operator of an emission source or activity that is listed as being exempt may be required to certify that it is operated within the specific criteria described in this Subpart. The owner or operator of any such emission source or activity must maintain all records necessary for demonstrating compliance with this Subpart on-site for a period of five years, and make them available to representatives of the department upon request.

(b) The owner or operator of any emission source or activity that is listed as being exempt in this section [on the basis of the use of appropriate emission controls] shall operate and maintain [those] the emission source and any associated emissions controls in a manner consistent with manufacturer's specifications and good engineering practices. Failure to do so constitutes a violation of this Part.

(c) The category headings used in the following listing of exempt activities are strictly for organizational purposes and are not intended to be definitive. The following activities are exempt from permitting requirements at non-title V facilities, but must be listed in title V facility permit applications:

#### Combustion

(1) Stationary or portable combustion installations [with:] where the furnace has:

(i) a maximum rated heat input capacity less than 10 million Btu/hr burning liquid and gaseous fuels [other than coal or wood]; or

(ii) a maximum rated heat input capacity of less than one million Btu/hr burning [coal or wood] solid

fuels.

This activity does not include combustion equipment burning any material classified as a solid waste, as defined in Part 360 of this Title, a hazardous waste, as defined in Part 371 of this Title, or waste oil, as defined in Subpart 225-2 of this Title.

(2) Space heaters burning waste oil at [automotive service] eligible facilities, as defined in Subpart 225-2 of this Title, generated on-site or at a facility under common control, alone or in conjunction with used oil generated by a do-it-yourself oil changer as [defined] described in Subpart 374-2 of this Title.

(3) Stationary or portable internal combustion engines which meet the following criteria:

(i) are liquid or gaseous fuel powered, and located within the New York City metropolitan area or the Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, or Woodbury, and have maximum mechanical power rating of less than 200 brake horsepower; or

(ii) are liquid or gaseous fuel powered, and located outside of the New York City metropolitan area or the Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, or Woodbury, and have maximum mechanical power rating of less than 400 brake horsepower; or

(iii) are gasoline powered and have a maximum mechanical power rating of less than 50 brake horsepower.

(4) 'Reserved'.

(5) Gas turbines with a heat input at peak load less than 10 million Btu per hour.

(6) Emergency power generating stationary internal combustion engines, as defined in section 200.1(cq) of this Title[, and engine test cells at engine manufacturing facilities that are utilized for research and development, reliability performance testing, or quality assurance performance testing]. Stationary internal combustion engines used for peak shaving and/or demand response programs are not exempt.

#### Combustion-Related

(7) Non-contact water cooling towers and water treatment systems for process cooling water and other water containers designed to cool, store or otherwise handle water that has not been in direct contact with gaseous or liquid process streams.

#### Agricultural

(8) Feed and grain milling, cleaning, conveying, drying and storage operations including grain storage silos, where such silos exhaust to an appropriate emission control device, excluding grain terminal elevators with permanent storage capacities over 2.5 million U.S. bushels, and grain storage elevators with capacities above one million bushels.

(9) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

#### Commercial - Food Service Industries

(10) Flour silos at bakeries, provided all such silos are exhausted through an appropriate emission control device.



(11) Emissions from flavorings added to a food product where such flavors are manually added to the product.

#### Commercial - Graphic Arts

(12) Screen printing inks/coatings or adhesives which are applied by a hand-held squeegee. A 'hand-held squeegee' is one that is not propelled through the use of mechanical conveyance and is not an integral part of the screen printing process.

(13) Graphic arts processes at facilities located outside the New York City metropolitan area or the Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, or Woodbury [whose facility-wide total emissions of volatile organic compounds from inks, coatings, adhesives, fountain solutions and cleaning solutions are less than three tons per year on a 12-month rolling basis] with facility-wide total annual actual emissions of volatile organic compounds from graphic arts processes and associated cleaning operations of less than three tons on a 12-month rolling basis.

(14) Graphic label and/or box labeling operations where the inks are applied by stamping or rolling.

(15) Graphic arts processes which are specifically exempted from regulation under Part 234 of this Title, with respect to emissions of volatile organic compounds which are not given an A rating as described in Part 212 of this Title.

#### Commercial - Other

(16) Gasoline dispensing sites registered with the department pursuant to Part [612] 613 of this Title.

(17) Surface coating and related activities at facilities which use less than 25 gallons per month of total coating materials, or with actual VOC emissions of 1,000 pounds or less from coating materials in any 12-month period. Coating materials include all paints and paint components, other materials mixed with paints prior to application, and cleaning solvents, combined. This exemption is subject to the following:

(i) the facility is located outside of the New York City metropolitan area or the Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, or Woodbury; and

(ii) all abrasive cleaning and surface coating operations are performed in an enclosed building where such operations are exhausted into appropriate emission control devices.

(18) Abrasive cleaning operations which exhaust to an appropriate emission control device.

(19) Ultraviolet curing operations.

#### Municipal/Public Health Related

(20) Landfill gas ventilating systems at landfills with design capacities less than 2.5 million megagrams (3.3 million tons) and 2.5 million cubic meters (2.75 million cubic yards), where the systems are vented directly to the atmosphere, and the ventilating system has been required by, and is operating under, the conditions of a valid Part 360 permit, or order on consent.

#### Storage Vessels

(21) Distillate fuel oil, residual fuel oil, and biodiesel [liquid asphalt] storage tanks with storage capacities below 300,000 barrels.

(22) Pressurized fixed roof tanks which are capable of maintaining a working pressure at all times to prevent emissions of volatile organic [compound] compounds to the outdoor atmosphere.

(23) External floating roof tanks which are of welded construction and are equipped with a metallic-type shoe primary seal and a secondary seal from the top of the shoe seal to the tank wall.

(24) External floating roof tanks which are used for the storage of a petroleum or volatile organic liquid with a true vapor pressure less than 4.0 psi (27.6 kPa), are of welded construction and are equipped with one of the following:

(i) a metallic-type shoe seal;

(ii) a liquid-mounted foam seal;

(iii) a liquid-mounted liquid-filled type seal; or

(iv) equivalent control equipment or device[;].

(25) Storage tanks, including petroleum liquid storage tanks as defined in Part 229 of this Title and liquid asphalt storage tanks, with capacities [under] less than 10,000 gallons, except those subject to either Part 229 or Part 233 of this Title.

(26) Horizontal petroleum or volatile organic liquid storage tanks.

(27) Storage [silos storing] of solid materials, provided all such [silos are] storage is exhausted through

an appropriate emission control device. This exemption does not include raw material, clinker or finished product storage [silos] at Portland cement plants.

## Industrial

(28) Processing equipment at existing sand and gravel and stone crushing plants which were installed or constructed before August 31, 1983, where water is used for operations such as wet conveying, separating and washing. This exemption does not include processing equipment at existing sand and gravel and stone crushing plants where water is used for dust suppression.

(29) Any sand and gravel [processing or crushed stone processing], crushed stone, concrete, or recycled asphalt processing line at a non-metallic mineral processing facility that:

(i) is a permanent or fixed installation with a maximum rated processing capacity of 25 tons of minerals per hour or less;

(ii) is a portable emission source with a maximum rated processing capacity of 150 tons of minerals per hour or less; or

(iii) is used exclusively to screen minerals at a facility where no crushing or grinding takes place.

(30) *Reserved.*

(31) Surface coating operations which are specifically exempted from regulation under [Part 228 of this Title] Subparts 228-1 and 228-2 of this Chapter, with respect to emissions of volatile organic compounds which are not given an A rating pursuant to Part 212 of this Title.

(32) Pharmaceutical tablet branding operations.

(33) Thermal packaging operations, including but not limited to, thermal labeling, blister packing, shrink wrapping, shrink banding, and carton gluing.

(34) Powder coating operations.

(35) All tumblers used for the cleaning and/or deburring of metal products without abrasive blasting.

(36) Presses used exclusively for molding or extruding plastics except where halogenated polymers are used or where halogenated carbon compounds or hydrocarbon solvents are used as foaming agents.

(37) Concrete batch plants where the cement weigh hopper and all bulk storage silos are exhausted through fabric filters, and the batch drop point is controlled by a shroud or other emission control device.

(38) Cement storage operations not located at Portland cement plants where materials are transported by screw or bucket conveyors.

(39) Solvent cleaning processes:

(i) Cold cleaning degreasers with an open surface area of 11 square feet or less and an internal volume of 93 gallons or less or, having an organic solvent loss of 3 gallons per day or less.

(ii) Conveyorized degreasers with an air/vapor interface smaller than 22 square feet (2.0 m<sup>2</sup>), unless subject to the requirements in 40 CFR 63, subpart T.

(iii) Open-top vapor degreasers with an open-top area smaller than 11 square feet (1.0 m<sup>2</sup>), unless subject to the requirements in 40 CFR 63, subpart T.

#### Miscellaneous

(40) Ventilating and exhaust systems for laboratory operations. [Laboratory operations do not include processes having a primary purpose to produce commercial quantities of materials.] This exemption does not include laboratory operations used to produce products for sale except in a de minimis manner.

(41) Exhaust or ventilating systems for the melting of gold, silver, platinum and other precious metals.

(42) Exhaust systems for paint mixing, transfer, filling or sampling and/or paint storage rooms or cabinets, provided the paints stored within these locations are stored in closed containers when not in use.

(43) Exhaust systems for solvent transfer, filling or sampling, and/or solvent storage rooms provided the [solvent stored within these locations] solvents are stored in closed containers when not in use.

(44) [Research and development activities, including both stand-alone and activities within a major facility, until such time as the administrator completes a rule making to determine how the permitting program should be structured for these activities.] ‘Reserved.’

(45) The application of odor counteractants and/or neutralizers.

(46) Hydrogen, natural gas, and methane fuel cells.

(47) Dry cleaning equipment that uses only water-based cleaning processes or those using liquid carbon dioxide.

(48) Manure spreading, handling and storage at farms and agricultural facilities.

(49) Covered manure storage at farms that exhausts to a flare or other appropriate emission control device. This activity does not include anaerobic digestion processes operating with or without stationary or portable combustion installations.

(50) Coffee roasting processes which have a maximum operating capacity of 3 kilograms or less of green coffee beans per batch and no greater than 25 tons of green coffee beans per year, that are vented through an unobstructed, vertical stack that ensures proper dispersion of air contaminants.

(51) Process emission sources at breweries with total combined beer and/or malt liquor production of 60,000 barrels per year or less.

(52) Process emission sources at wineries with total combined wine and/or brandy production of 700,000 gallons per year or less.

(53) Process emission sources at distilleries with 10,000 distiller's bushels of grain input per year or less.

(54) Process emission sources at wood and lumber drying kilns with an annual throughput of untreated wood of 275,000 board feet or less.

(a) The owner or operator of an emission source or activity that is listed as being trivial in this section may be required to certify that it is operated within the specific criteria described in this Subpart. The owner or operator of any such emission source or activity must maintain all required records on-site for a period of five years and make them available to representatives of the department upon request.

(b) The owner or operator of any emission source or activity that is listed as being trivial in this section[, on the basis of the use of appropriate emission controls,] shall operate and maintain [those] the emission source and any associated emissions controls in a manner consistent with manufacturer's specifications and good engineering practices. Failure to do so constitutes a violation of this Part.

(c) The category headings used in the following listing of trivial activities are strictly for organizational purposes and are not intended to be definitive. The following activities are trivial and are exempt from permitting requirements and do not need to be included in the title V facility permit application:

#### Combustion

- (1) Boiler water treatment operations.

#### Domestic / Work Station Comfort and Related

- (2) Any emission source or process constructed or operated at a domestic residence strictly for domestic use.

- (3) Vacuum cleaning systems used exclusively for office type areas at industrial facilities, or commercial or residential housekeeping.

- (4) Ventilating systems used exclusively for temperature and humidity control of buildings for the



comfort of people living or working within the building except those systems which are subject to applicable requirements under title VI of the act.

(5) Exhaust systems for the storage of portable containers, drums, and bags of chemicals in rooms, buildings and warehouses, subject to the following:

(i) the rooms, buildings and warehouses subject to this exemption are solely for the purpose of chemical storage, and no mixing, transfer or filling operations with the exception of sampling for quality assurance/quality control purposes, take place within such areas; and

(ii) the chemicals stored in such areas are maintained in sealed containers.

(6) Smoking rooms and areas.

(7) Bathroom/toilet vents.

(8) Beauty salons, nail salons, and barber shops.

(9) Laundry dryers, extractors, or tumblers used to clean fabrics with water solutions of bleach and detergents, where the emissions of such operations are controlled by appropriate emission control devices.

#### Mobile Sources and Mobile Source Related

(10) Engine exhaust emissions and/or refueling emissions generated from mobile and portable powered vehicles and equipment used for the propulsion or operation of passengers and/or freight transportation vehicles, marine vehicles and equipment, construction and vehicles and equipment powered by non-road

engines, farm vehicles and equipment, competition and entertainment vehicles and equipment, and/or any other type of mobile or portable engine powered vehicles or equipment when these vehicles or equipment are operated anywhere outside of an enclosed facility for the purpose of their design and intended use or for compliance assessment with any safety or emission control or inspection programs sanctioned by New York State, the Federal government or any governmental entity empowered to carry out such activities.

(11) Engine exhaust emissions and/or refueling emissions generated from mobile and portable powered vehicles and equipment such as competition and entertainment vehicles and equipment, farm vehicles and equipment, construction and vehicles and equipment powered by non-road engines, automobiles, motorcycles, trucks, buses, marine vehicles and equipment, small engine powered tools and equipment, or any other type of mobile or portable engine powered vehicles or equipment which are collected and/or vented in any manner to the outdoor atmosphere when these vehicles and equipment are operated inside of an enclosed structure or under a covered structure for the purposes of their design and intended use, public safety, comfort or entertainment, facility maintenance, vehicle or equipment repair, adjustment or testing, or compliance assessment with any safety or emission control or inspection programs sanctioned by New York State, the Federal government, or any governmental entity empowered to carry out such activities.

(12) The use of products such as antifreeze and fuel additives for the purpose of maintaining motor vehicles.

(13) Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.

#### Agricultural

(14) Ventilating systems used in buildings to house animals.

## Commercial - Food Service Industries

(15) Emissions from process, exhaust or ventilating systems in bakeries and restaurants which derive over 50 percent of their revenues from retail sales on premises.

(16) Non-conveyorized bakery ovens, including batch ovens, which are defined as a non-conveyor belt oven operating a single baking cycle in which a determinate amount of product is cooked at one baking.

(17) Bakery ovens used exclusively to produce baked goods leavened chemically in the absence of yeast.

(18) Process or exhaust or ventilating systems involved in the preparation of food, food blanching or cooking in water.

(19) Process, exhaust or ventilating systems or stationary combustion installations exclusively involved in the production of maple syrup.

## Commercial - Graphic Arts

(20) Lead melting pots used in printing establishments.

(21) Blueprint machines.

(22) Photocopying, photographic processing or related equipment.

(23) Proof press operations.

(24) Heat sealing operations which are used to seal and separate polyethylene and polypropylene bags.

#### Commercial - Other

(25) Batch process kilns used for firing ceramic ware, subject to the following:

(i) the exhaust stream does not contain emissions of fluorides, lead, and/or beryllium; and

(ii) the total heat input is less than one million Btu/hr.

#### Municipal/Public Health Related

(26) Equipment used exclusively to generate ozone for water treatment processes.

(27) Air stripping processes utilized on public drinking water supplies.

(28) [Air strippers and soil vents used to remediate gasoline spills, where the air stripper or soil vent is located at a State-funded site, or required under the provisions of an order on consent or stipulation agreement, and the operation of the air strippers or soil vents are conducted under the supervision of the department and are properly controlled as required by the department.] Sub-slab depressurization systems that are not installed or operated as a remedial system for soil or groundwater contamination.

(29) [Air strippers and soil vents that are:

(i) required by the provisions of an order on consent: or

(ii) operated under an agreement with, and under the supervision of, the department: or

(iii) operated at a superfund site.] Remedial systems used to remediate soil and groundwater contamination that are required under the provisions of an order on consent or stipulation agreement, operated under the supervision of the department, and are properly controlled as required by the department.

(30) Air strippers and [soil vents operating] monitoring wells operated for test purposes to qualify and quantify air emissions for remediation projects [and for] where such operations do not exceed a time period that is acceptable to the department.

(31) Emissions from the storage and application of road salt (calcium chloride or sodium chloride).

(32) All process emission sources which are located at private, public, or vocational education institutions, where the emissions are primarily the result of teaching and training exercises, and the institution is not engaged in the manufacture of products for commercial sale.

(33) 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. This activity does not include bypass stacks or vents on incinerators or any other equipment, or any other vents or stacks that operate or release air contaminants to the outdoor atmosphere on a frequent or regular basis.

(34) Snow plowing, street sweeping, sanding and ashing of streets and roads to abate traffic hazards.

(35) Emergency road flares.

(36) Road and lot paving and striping operations.

(37) Public or private roadways, parking lots.

(38) Manhole covers.

(39) Sewers.

(40) Storm drains and vents.

(41) Solid waste handling equipment, including but not limited to: dumpsters, transfer stations, wood chippers, recycling operations, composting operations, [tub grinders, construction and demolition waste crushers] and associated activities. This activity does not include solid waste incinerators and other thermal treatment technologies, scrap metal and automotive shredding operations, or construction and demolition waste crushers.

(42) Excavation for the repair of underground utility lines such as water, electric, or natural gas.

(43) Asbestos demolition and removal work subject to 40 CFR part 61, subpart M and/or 12 NYCRR Part 56.

#### Storage Vessels

(44) Storage vessels, tanks and containers with a capacity of less than 750 gallons.

#### Maintenance and Construction Related Activities

(45) The following activities are considered trivial when they occur strictly for maintenance or construction activities: plastic pipe welding, soldering, brazing, cutting torches, janitorial activities, steam cleaning, water washing, acid and caustic washing activities, miscellaneous use of solvents, adhesives and caulking, miscellaneous sandblasting, non-asbestos insulation removal, application of refractory and insulation, the periodic use of air for clean-up, [and,] the process of demolition and rebricking boilers, smelters, furnaces and kilns (this does not include the subsequent operation of such equipment), the surface coating of equipment and buildings as is related to maintenance and construction, and activities which occur for maintenance of grounds such as lawn care, weed control and pest control.

(46) Excavation for new construction.

#### Industrial

(47) Degreasing units which exclusively use non-hazardous air pollutant acids.

(48) Degreasing units which exclusively use caustics (*e.g.*, potassium hydroxide and sodium hydroxide).

(49) 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 16 square inches, and is returned to a remote reservoir containing the solvent.

(50) 'Reserved'.

(51) Cold cleaning degreasers with an internal volume less than or equal to two gallons.

(52) Hand-held or manually operated equipment used for buffing, polishing, carving, cutting, drilling,

machining, routing, sanding, sawing, surface grinding, sand blasting or turning ceramic art work, ceramic precision parts, leather, metal parts, plastics, fiberboard, fiberglass, masonry, carbon, glass, graphite, wood or rubber.

(53) Manual surface coating/painting processes which exclusively use brushes, rollers, hand held spray guns with a capacity less than three ounces, or aerosol cans.

(54) Hand-held or manually operated welding, brazing and soldering equipment.

(55) Acetylene, butane, and propane torches.

(56) Equipment used for hydraulic or hydrostatic testing.

(57) Equipment lubricating systems, including metal cutting coolants and oils.

(58) Pneumatic starters used to start reciprocating engines, turbines, and other equipment.

(59) Instrument air systems, excluding fuel-fired compressors.

(60) Air vents from air compressors and pneumatically operated equipment emitting ambient air.

(61) Drum washing operations, where such operations are necessary to meet Resource Conservation and Recovery Act (RCRA) standards.

(62) Vacuum producing devices where only ambient air and the oil emissions from the vacuum



producing mechanism itself are exhausted.

(63) Woodworking operations [where no surface coating takes place,] provided such operations exhaust to a sawdust collection system controlled by an appropriate emission control device. This activity does not include surface coating operations.

(64) Sawmills, provided all processes are located at least 500 feet from any recreational area, school, or private residence and all residues from debarking, planing, sawing, etc., are contained in such a manner as to minimize fugitive emissions.

(65) Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

(66) Drop hammers or hydraulic presses for forging or metalworking.

(67) Transportable chemical containers including rail cars, portable tanks, totes and trailers.

#### Miscellaneous

(68) Open fires as [described] defined in Part 215 of this Title.

(69) Fire training activities as [described in] allowed under Part 215 of this Title.

(70) Fire suppression systems.

(71) Fecal incinerators with a charging rate not exceeding 10 pounds per hour, such as those used on

certain vehicles or other special cases.

(72) Paint mixing operations located at retail paint, hardware or department stores where the paint is sold in five gallon or smaller containers.

(73) Rifle and pistol ranges.

(74) Aircraft de-icing operations.

(75) Contaminant detectors, sampling devices and recorders.

(76) Emissions from natural gas odoring activities.

(77) Battery charging areas except those located at battery manufacturing plants.

(78) Incubators.

(79) The venting of compressed natural gas, butane or propane gas cylinders.

(80) Coal car thaw-pit burners.

(81) Use of office equipment and products including, but not limited to, desktop printers, fax machines, scanners and photocopiers used as printers, but not including graphic arts processes as defined in Part 234 of this Title.

(82) Consumer use of paper trimmers/binders.

(83) Blacksmith forges.

(84) [Carbon dioxide lasers, used only on metals and other materials which do not emit hazardous air pollutants in the process.] Laser and plasma cutters and trimmers using appropriate emissions control devices that do not emit hazardous air pollutants.

(85) [Laser trimmers using appropriate emission control devices.] 'Reserved'.

(86) Environmental chambers not using hazardous air pollutant gases.

(87) Shock chambers.

(88) Humidity chambers.

(89) Solar simulators.

(90) Process water filtration systems and demineralizers.

(91) Demineralized water tanks and demineralizer vents.

(92) Steam leaks.

(93) Steam vents.

(94) Emissions of water vapor, oxygen, nitrogen, inert gases such as argon, helium, neon, krypton and xenon, hydrogen, ethane, and trace constituents included in raw materials where the constituents are less than 1 percent by weight for any regulated air pollutant, or 0.1 percent by weight for any carcinogen listed by the United States Department of Health and Human Services' [Twelfth Annual] Fourteenth Report on Carcinogens [(2011)] (2016) (see Table 1, Section 200.9 of this Title).

(95) Emissions of carbon dioxide and methane, except where specifically regulated by a Federal or State law or regulation.

(96) Solvent cleaning of parts and equipment performed exclusively by hand wiping or hand cleaning unless such cleaning reaches the applicability criteria of Subpart 226-2 of this Title.

## SUBPART 201-4

### MINOR FACILITY REGISTRATION

#### Section 201-4.1 Applicability.

(a) Owners or operators of facilities with emission sources that are not [considered to be] exempt or trivial pursuant to Subpart 201-3 of this Part, and not otherwise required to obtain a permit pursuant to Subparts 201-5 or 201-6 of this Part, are required to register with the department as specified in this Subpart. Such facilities include, but are not limited to:

(1) any facility which has annual actual emissions of regulated air contaminants, each of which do not exceed the appropriate threshold in section 201-4.5(a) of this Subpart, regardless of the facility's potential to emit for that contaminant; and

(2) any facility [, except a stationary or portable combustion installation,] with annual actual emissions of all [persistent, bioaccumulative or toxic compounds] high toxicity air contaminants in an amount that is less than the [threshold] thresholds listed in Table 1 of Subpart 201-9 of this Part. The facility's annual actual emissions of high toxicity air contaminants do not include emissions from stationary or portable combustion installations and activities considered to be exempt or trivial, as described in Subpart 201-3 of this Part.

(b) The owner or operator of a facility that otherwise meets the criteria in subdivision (a) of this section may be required to apply for a State facility permit pursuant to Subpart 201-5 of this Part if the department determines that permit conditions are necessary to ensure the facility's continuous compliance with one or more applicable requirements and/or the requirements of this Chapter. The facility owner or operator shall have six months from receipt of the department's determination to submit a complete permit application.

Section 201-4.2 General Requirements.

(a) Registrations are ministerial actions for the purposes of Part 617 State Environmental Quality Review of this Title.

(b) Registrations are not subject to Part 621 Uniform Procedures of this Title.

(c) Registrations shall authorize both construction and operation of the listed emission sources at the registered facility.

(d) Where the activity requiring registration is associated with the construction of a new facility or emission source, or modification of an existing facility or emission source, the owner or operator may not commence construction or modification until a new registration certificate is [received from] issued by the department. The department will notify the facility owner or operator whether the registration application is acceptable within 30 days of receipt of the application.

(e) New and modified registrations issued after the effective date of this Subpart are valid for 10 years from the date of issuance.

(f) The department may withdraw or revoke, consistent with the suspension and revocation procedures set forth in Part 621 of this Title, any registration upon a determination that the registered activity poses the potential for a significant adverse impact to the public health, safety, welfare, or the environment.

(g) The owner or operator of a facility holding a registration issued [prior to the effective date of this Subpart] without an expiration date must submit an updated registration application, as described in this Subpart, to the department within 90 days of receiving written notification from the department.

#### Section 201-4.3 Application Content.

(a) All registration applications submitted to the department shall be signed by a responsible official and provided in a format acceptable to the department. At a minimum, registration applications must include the following:

(1) identifying information, including [owner] the owner's name and address, [facility] and the facility's name and address;

(2) if the application is for a new facility, a location map with the facility location clearly marked on it;

(3) a detailed description of the operations carried out at the facility including all emission sources, processes and products;

(4) a listing of the Standard Industrial Classification Codes (SIC) or North American Industry Classification System codes (NAICS) that corresponds to the primary operations carried out at the facility;

(5) a list of all regulated air pollutants and [persistent, bioaccumulative and toxic compounds] high toxicity air contaminants, as listed in Subpart 201-9 of this Part, emitted from the facility, including the rate and quantity of emissions in sufficient detail for the department to determine all State and Federal requirements that are applicable to the facility;

(6) a list of all emission sources at the facility, except those that are exempt or trivial pursuant to Subpart 201-3 of this Part;

(7) a listing of the applicable New York State requirements in this Chapter;

(8) a listing of the applicable Federal requirements; and

(9) any other related information requested by the department.

(b) Renewal applications for air facility registrations must be submitted to the department no later than 60 days prior to the [date of registration expiration] expiration date of the registration. The owner or operator of an existing registered facility may continue to operate that facility while the renewal application is processed provided the application is submitted as described in this subdivision.

#### Section 201-4.4 Notification of changes in ownership.

[(a) Owners or operators of registered facilities must provide the department with an updated registration application at least 30 days in advance of undertaking modifications to the facility that will make the facility subject to additional State or Federal regulatory requirements.

(b)] Owners or operators of registered facilities must notify the department of a change or transfer of ownership within 30 days of such transfer by submitting an updated registration application and application for permit transfer to the department.

#### Section 201-4.5 Emission capping by rule.

[(a) Any facility with the potential to emit one or more regulated air contaminants at a rate greater than or equal to the major facility threshold or any lesser threshold in an applicable requirement, but with actual emissions less than the thresholds described below, may elect to accept a federally enforceable emission cap on those contaminants. Facilities operating pursuant to this section must emit less than the following thresholds



during every 12-month period:

(1) 50 percent of the major facility threshold for any regulated air contaminant;

(2) 50 percent of any lesser threshold for a single hazardous air pollutant that the administrator may establish by rule and upon incorporation in State regulation; or

(3) 50 percent of any lesser threshold established in State regulations for volatile organic compounds.]

(a) ‘Purpose’. The purpose of this section is to provide a method of establishing federally enforceable emission caps known as capping by rule. A facility may cap by rule as follows:

(1) ‘Major Facility Thresholds’. To avoid the requirement for a Title V facility permit, the facility owner or operator must maintain actual emissions of each regulated air contaminant at less than 50 percent of the major facility thresholds, as described in Paragraph 201-2.1(b)(21) of this Subpart, during each 12-month period; and/or

(2) ‘Applicable State Thresholds’. To avoid the control requirements of a state regulation, the facility owner or operator must maintain actual emissions of volatile organic compounds at less than 50 percent of an applicability threshold based on potential to emit in that regulation during each 12-month period.

(b) If the facility owner or operator determines that an emission limitation or requirement established by this section is unacceptable, the owner or operator must apply for either a State facility permit pursuant to Subpart 201-5 of this Part or a title V facility permit pursuant to Subpart 201-6 of this Part.

(c) The owner or operator of any facility subject to this section must maintain all required records on-site for a period of five years and make them available to representatives of the department upon request.

(d) The owner or operator of any facility that meets the criteria established pursuant to subdivisions (f), (g) and (h) of this section, and uses air pollution control equipment to comply with an emissions cap established pursuant to this section, shall operate and maintain such equipment in a manner consistent with manufacturer's specifications. If such control equipment is required by any other Part of this Chapter and would limit emissions to a greater degree than the thresholds established in this section then the more stringent emission limitation applies.

(e) The facility owner or operator must monitor and record process parameters to the extent necessary to determine actual emissions, including but not limited to the following:

(1) information on emission control equipment type and description, make and model, and emission sources served by the emission control unit;

(2) information on emission control equipment design, including where applicable: pollutant(s) controlled; control effectiveness; maximum design or rated capacity; inlet and outlet temperatures; concentrations of each pollutant controlled; catalyst data (type, material, life, volume, space velocity, ammonia injection rate and temperature); baghouse data (design, cleaning method, fabric material, flow rate, air/cloth ratio); electrostatic precipitator data (number of fields, cleaning method, and power output); scrubber data (type, design, sorbent type, pressure drop); other design data as appropriate; all emission source test information; and

(3) a monthly log of hours of operation including notation of any control equipment breakdowns, [upsets] malfunctions, repairs, maintenance and any other deviations from design parameters.

(f) The owner or operator of any stationary combustion installation subject to this [Subpart] section must keep and maintain the following records:

(1) Records indicating the type and quantity of fuel combusted at the facility during every 12-month period. Facilities capable of using more than one fuel must also demonstrate that the [annual] actual emissions for every 12-month period do not exceed the thresholds listed in subdivision (a) of this section, based on the type and quantity of fuel used.

(2) Information on equipment type, make and model, maximum design process rate or maximum power input/output, all source test information, fuel heating value, percent sulfur for fuel oil, and a monthly log of hours of operation.

(g) The owner or operator of any facility that operates coating/solvent emission sources or uses a coating, solvent, ink, sealant or adhesive and is subject to this [Subpart] section must keep and maintain the following records:

(1) a current list of all coatings, solvents, inks, sealants and adhesives in use. This list must include: information on the manufacturer, brand, product name or code, VOC content in pounds per gallon, hazardous air pollutants (HAPs) content in pounds per gallon, or other manufacturer's product specifications;

(2) a description of equipment used during and after coating, solvent, ink sealant or adhesive application, including type, make and model; maximum design process rate or throughput; all emission control unit information as described in subdivision (e) of this section, as applicable, and a description of the coating/solvent application/drying method(s) employed;

(3) a monthly log of the consumption of each solvent (including solvents used in clean up and surface preparation), coating, ink, sealant and adhesive used and calculations showing compliance with the emission limits required by subdivision (a) of this section, as applicable. For the purpose of complying with this Subpart, all VOCs and HAPs consumed during the application of coatings, solvents, inks, sealants and adhesives are to be considered as being emitted to the atmosphere; and

(4) all purchase orders, invoices, and other documents to support the information in the monthly log.

(h) The owner or operator of a facility with general process, exhaust, or ventilation systems that are subject to this Section, but do not fit the classifications described in subdivision (f) or (g) of this section, must keep and maintain the following records:

(1) information on the process and equipment including the following: equipment type, description, make and model; maximum design process rate or throughput, all emission control unit information as described in subdivision (e) of this section, as applicable;

(2) a monthly log of operating hours, each raw material used and its amount, each product produced and its production rate;

(3) purchase orders, invoices, and other documents to support information in the monthly log; and

(4) any additional information as requested by the department.

(i) The owner or operator of any facility subject to this section must apply for and obtain all necessary

approvals prior to commencing any physical or operational change which will result in an increase in actual emissions above the emission limitations in subdivision (a) of this section. The facility will remain subject to all applicable requirements until a new emission cap is established in accordance with section 201-7.1 of this Part.

(j) A responsible official must verify annually through a review of required records and totaling of emissions information that the facility is eligible for regulation by this section and has operated in accordance with all requirements of this section. A record of this verification must be kept on-site for inspection by the department for five years, along with the emission estimates and their basis, showing compliance with this section. In any situation where the provisions of this section have not been or are not expected to be met, the facility owner or operator shall notify the department.

[(1)] (k) If the owner or operator of the facility cannot demonstrate, through the use of the limitations and requirements described in this section, that the facility-wide emission totals for any 12-month period are below the emission limits as specified in subdivision (a) of this section, the facility must demonstrate compliance with all applicable requirements the facility avoided pursuant to the provisions of this section.

SUBPART 201-5  
STATE FACILITY PERMITS

Section 201-5.1 Applicability.

(a) Except when required to obtain a title V facility permit pursuant to Subpart 201-6 of this Part, owners or operators of facilities with emission sources that are not [considered to be] exempt or trivial pursuant to Subpart 201-3 of this Part[, or that cannot register pursuant to Subpart 201-4 of this Part,] are subject to the requirements of this Subpart if:

(1) the facility's potential to emit is being capped pursuant to section 201-7.1 of this Part to avoid the requirement to obtain a title V permit or other applicable requirement;

(2) the facility is subject to any department approved variance from the requirements of this Chapter;

(3) the facility has annual actual emissions of one or more [persistent, bioaccumulative or toxic compounds] high toxicity air contaminants greater than or equal to the thresholds listed in table 1 of Subpart 201-9 of this Part, [, except where the facility is a] The facility's annual actual emissions of high toxicity air contaminants do not include emissions from stationary or portable combustion installations and activities considered to be exempt or trivial, as described in Subpart 201-3 of this Part; or

(4) the facility has annual actual emissions of any regulated air contaminant in excess of the thresholds listed in section 201-4.5(a) of this Part.

(b) [State facility permits shall authorize both construction and operation of one or more emission sources under a single permit. No person shall construct a new emission source described under subdivision (a) of this

section without a State facility permit, or construct new emission sources or modify existing emission sources without a permit modification unless the changes are allowed under section 201-5.4 of this Subpart.] Where the activity requiring a State facility permit is associated with the construction of a new facility or emission source, or modification of an existing facility or emission source, the owner or operator of the facility or emission source may not commence construction or modification until a new or modified State facility permit is issued by the department.

(c) Notwithstanding the requirements of Subdivision (a) of this Section, the owner or operator of a facility subject to the requirements of this Subpart may apply for a minor facility registration, as described in Subpart 201-4 of this Part, if permitted to do so by another applicable regulation under this Chapter.

#### Section 201-5.2 Application content.

(a) All State facility permit applications submitted to the department shall be signed by a responsible official and provided in a format acceptable to the department.

(b) State facility permit applications must include the following information:

(1) identifying information, including owner name and address, facility name and address, responsible official name and address;

(2) a location map with the site marked on it if the application is for a new facility;

(3) a list and description of all emission sources at the facility except those that are listed as exempt or trivial in Subpart 201-3 of this Part;

(4) a listing of the Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) codes which correspond to the primary operations carried out at the facility;

(5) a description of all processes, their associated emission sources and products;

(6) a list of all emission points including the following parameters: stack height (ft), stack height above building (ft), internal stack diameter (in), exit temperature (degrees F), exit velocity (ft/sec), exit flow (acfm), distance from [emission] the emission point to the property line (ft) and NYTM coordinates;

(7) a process flow diagram detailing which process emissions and emission sources exhaust from which emission point;

(8) a list including the type, rate and quantity of all regulated air pollutant emissions and [persistent, bioaccumulative and toxic compound] high toxicity air contaminant emissions, as listed in Subpart 201-9 of this Part, in sufficient detail for the department to determine those State and Federal requirements that are applicable to the facility;

(9) a list of all State and Federal air pollution control requirements applicable to the facility; and

(10) any other information requested by the department.

(c) Renewal applications for State facility permits must be submitted to the department at least 180 days, but not more than 18 months, prior to the date of permit expiration. While the renewal application is being processed by the department, the owner or operator of the facility may continue to operate that facility under the terms and conditions of the existing permit, provided the application is submitted in accordance with this



Subdivision.

(d) State facility permit renewal applications for facilities that have accepted an emissions cap pursuant to Subpart 201-7 of this Part are subject to the public noticing procedures for new State facility permits described in Part 621 of this Title.

#### Section 201-5.3 Permit content and terms of issuance.

(a) New and modified State facility permits will be issued for a period not to exceed 10 years.

(b) Facility owners or operators holding an existing State facility permit issued [prior to the effective date of this Subpart] without an expiration date must submit an updated State facility permit application, as described in this Subpart, to the department within 90 days of receiving written notification from the department.

(c) Permits may contain such conditions as the department shall require to [insure] ensure compliance with the provisions of this Title, to identify applicable Federal standards, recordkeeping and reporting requirements and ensure that operation of the facility will not prevent attainment or maintenance of one or more rational ambient air quality standards.

#### Section 201-5.4 Permit modifications

(Existing Section 201-5.4 is repealed. A new Section 201-5.4 is added as follows:)

(a) The owner or operator of a facility subject to this Subpart must submit an application for permit modification, as described in Section 201-5.2 of this Subpart, prior to commencing construction of either a significant modification as described in Subdivision (b) of this Section, or a minor modification as described in Subdivision (c) of this Section.

(b) 'Significant Permit Modifications'.

(1) The following changes to existing facilities are considered significant modifications:

(i) Changes that cause the facility to become subject to a new applicable requirement;

(ii) Changes that result in less stringent monitoring, record keeping, or reporting requirements;

(iii) Changes that seek to establish or change a case-by-case determination or department approved variance;

(iv) Changes that seek to establish or change a federally enforceable emissions cap or a permit term or condition that the facility has accepted to avoid an applicable requirement to which the facility would otherwise be subject; and

(v) Changes that are modifications under any provision of Title I of the Act that result in an emissions increase in excess of the NSR major facility thresholds contained in Subpart 231-13 of this Title.

(2) Applications for significant permit modifications are subject to the public noticing requirements for new applications pursuant to the requirements of Part 621 of this Title. The modified permit must be issued before the facility owner or operator may commence construction or operation of the requested modification.

(c) 'Minor Permit Modifications'.

(1) A minor modification is any change at an existing facility that meets the definition of modification at Part 200.1(aq) of this Title and is not a significant modification as described in Subdivision (b) of this Section.

(2) The department will review and act on applications for minor permit modifications in accordance with the requirements for minor projects under Part 621 of this Title.

(3) The facility owner or operator may proceed with the requested minor modification upon receipt of a notice of complete application from the department confirming that the modification is minor. If the department fails to make a completeness determination, the application shall be deemed complete by default on the 15th day after receipt of the application and the facility owner or operator may proceed with the requested modification on the 25th day after the date that the department received the application. After the facility owner or operator makes the change and until the department takes final action, or notifies the facility owner or operator that the requested modification does not meet the minor modification criteria, the facility owner or operator must comply with both the applicable requirements governing the change and any proposed permit terms and conditions contained in the application. During this time period, the facility owner or operator need not comply with the existing permit terms and conditions for which a modification is proposed. However, if the facility owner or operator fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions for which a modification is proposed may be enforced against it.

(d) 'Advance Notifications'. The owner or operator of a facility subject to the requirements of this Section may make changes that meet all of the criteria in paragraphs (1) through (4) of this subdivision without the prior approval of the department. The owner or operator of the facility must notify the department in writing at least 15 days in advance of making each such change, as described in subdivision (e) of this section.

(1) The change is not a significant modification as described in subdivision (a) of this section;

(2) The change does not cause facility emissions to exceed any emission limitation or other condition in the facility's permit or result in emissions of a regulated contaminant not previously emitted or authorized under a permit;

(3) The change does not cause the facility to become subject to any additional applicable requirements or regulations under this Title; and

(4) The change does not seek to establish or change a federally-enforceable emission cap or limit, or the monitoring, record keeping, or reporting requirement associated with the emission cap or limit.

(e) Advance notifications required by subdivision (d) of this section shall include the following information:

(1) identification of the emission unit(s), process(es), emission source(s), and emission point(s) affected by the proposed change;

(2) date on which the change is to occur;

(3) description of the proposed change;

(4) if appropriate, the identification and description of emissions control technology and compliance terms; and

(5) the identification of all contaminants emitted by the affected emission sources and calculations of the emission rate potential, potential to emit, and projected actual annual emission rates after the proposed change.

(f) The owner or operator of a facility which has made a change pursuant to subdivision (d) of this section must maintain a record of the date and description of each such change at the facility, and shall include each change in the facility's next permit renewal or modification application. These records shall be maintained at the facility until the changes are incorporated into the facility's permit and must be made available for review by department representatives upon request.

(g) The department may require a permit modification to impose applicable requirements or permit conditions if it determines that changes proposed pursuant to the advance notification requirements of subdivision (d) of this section do not meet the established criteria, or that the changes may have a significant air quality impact. In such cases, the department shall require that the facility owner or operator not undertake the proposed changes until a permit modification is issued. The department's determination shall include a listing of any additional information necessary to complete its review of the proposed changes.

SUBPART 201-6  
TITLE V FACILITY PERMITS

Section 201-6.1 Applicability.

(a) Except as otherwise set forth herein, no person shall construct or operate any of the following facilities without first obtaining a title V permit.

(1) Any major facility, as defined under Subpart 201-2 of this Part.

(2) Any facility specifically required to obtain a title V permit by being subject to a standard, limitation, or other requirement under the Federal New Source Performance Standards (NSPS) in 40 CFR part 60, *et seq.*

(3) Any facility, including an area source, subject to a standard or other requirement regulating hazardous air pollutants under federal National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR parts 61 and 63 that is specifically required to obtain a title V permit by the administrator of the act. A facility is not required to obtain a title V permit solely because it is subject to regulations or requirements promulgated for the control of accidental releases of substances regulated under section 112(r) of the act.

(4) Any affected source as defined in Subpart 201-2 of this Part.

(5) Any facility in a category designated by the administrator and added by the department pursuant to rulemaking.

(b) The following facilities are deferred or exempt from the requirement to obtain a title V facility permit under this section but may be subject to the requirements of [Subpart] Subparts 201-4 or 201-5 of this Part.

(1) Facilities that are not major facilities, affected sources, solid waste incineration units required to obtain a permit pursuant to section 129 of the act, and facilities subject to a Federal New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants promulgated prior to July 21, 1992 are exempted from the requirement to obtain a title V facility permit under this section.

(2) The administrator will determine whether to exempt or defer any or all non-major facilities subject to a Federal New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants promulgated after July 21, 1992 from the requirement to obtain a title V facility permit at the time a new standard is promulgated. Facilities that qualify for permit deferrals shall not be required to apply for a title V facility permit until the administrator promulgates standards specifying a due date for applications and these standards are adopted by the department pursuant to rulemaking.

(3) The following facility categories are exempt from the obligation to obtain a title V facility permit under this section:

(i) all facilities that would be required to obtain a permit solely because they are subject to 40 CFR part 60, subpart AAA - Standards of Performance for New Residential Wood Heaters;

(ii) all facilities that would be required to obtain a title V facility permit solely because they are subject to a standard listed in Subpart 201-6.7 of this Part;

(iii) all facilities that would be required to obtain a permit under this section solely because they are subject to 40 CFR part 61, subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standards for Demolition and Renovation; and

(iv) facilities that have accepted federally enforceable emission caps pursuant to Subparts 201-4 or 201-7 of this Part that restrict a facility's emissions to a level that is below the applicability threshold for having to obtain a title V facility permit.

(c) Any facility not required to obtain a permit pursuant to subdivision (a) of this section may opt to apply for a title V facility permit.

(d) A single title V facility permit will be issued for a facility with multiple emission sources, except upon request from an owner or operator for more than one permit. In no case shall the determination of whether a facility is subject to the requirement to obtain an operating permit according to this section be affected by the application for, or issuance of, more than one title V facility permit.

#### Section 201-6.2 Permit Applications.

(a) 'Timely application'. The owner or operator of a facility subject to this Subpart shall submit a complete application, as defined in Part 621 of this Title and this Subpart, for initial issuance of a title V permit, or renewal, in accordance with the timeframes established under paragraphs (1) through (6) of this subdivision:

(1) Prior to the commencement of construction of a new facility subject to permitting under this Subpart.

(2) Prior to the commencement of [operation] construction of new emission unit(s) or modified emission units at an existing facility that makes the facility subject to title V permitting. The owner or



operator of a facility subject to this provision may choose to apply for a State facility permit pursuant to section 201-5.2 of this Part. Upon issuance, that permit shall authorize both construction and operation of the new or modified emission units until a title V permit is issued in accordance with this Subpart. An application for a title V permit is required within one year of the commencement of operation of the new or modified emission unit(s).

(3) Prior to the commencement of construction of a new emission unit at an existing title V facility. The owner or operator of an existing title V facility, which is being modified by the addition of a new emission unit comprised solely of new emission sources, may apply for a State facility permit pursuant to section 201-5.2 of this Part that will authorize construction and operation of the new emission unit upon issuance. [A] An application for a title V permit modification is required within one year of the commencement of operation of the new emission unit.

(4) At least 180 days, but not more than eighteen months, prior to the date of permit expiration for permit renewal purposes.

(5) For existing facilities required to meet the requirements under section 112(g) of the act, prior to construction.

(6) For existing facilities with any emission source designated by EPA as requiring a title V facility permit, within 12 months after the effective date of EPA's designation, or by a later deadline specified by EPA in its designation.

(b) 'Completeness determinations'. (1) Applications submitted for title V facility permits must be reviewed for completeness by the department in accordance with subdivision (d) of this section and Part 621 of this Title.

(2) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the applicant shall provide additional information as necessary to address any requirements that become applicable to the facility after the date it filed a complete application but prior to release of a draft permit.

(3) If a facility owner or operator submits a timely and complete application for title V permit issuance and/or renewal, the failure to have a title V facility permit is not a violation of this Part because the department has not taken final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by a reasonable deadline specified in writing by the department, any additional information identified as being needed to review and act on the application. The department will reinstate this protection upon receipt of the additional information in the event that an applicant is unable to provide it within the specified timeframe.

(c) ‘Final decisions’. The department shall act on title V facility permit applications in accordance with the timeframes and procedures established in Part 621 of this Title. Failure to act on new title V facility permit applications within 18 months of receipt of a complete application shall be grounds for judicial review in State court.

(d) ‘Application Content’. All title V facility permit applications submitted to the department shall be signed by a responsible official and provided in a format acceptable to the department. Title V facility permit applications must include the following information at a minimum:

(1) Identifying information, including company name and address (or facility name and address if different from the company name), owner's name and representative, and telephone number and names of the facility manager/contact.

(2) A description of the facility's processes and products (by Standard Industrial Classification or North American Industry Classification System code) including any associated with each alternate operating scenario identified by the owner or operator.

(3) The following emissions-related information:

(i) All emissions of pollutants for which the facility is major, all emissions of regulated air pollutants, and all emissions of [persistent, bioaccumulative and toxic compounds] high toxicity air contaminants listed in Table 1 of Subpart 201-9 of this Part. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, emission point and process, except where such units are listed as exempt or trivial under Subpart 201-3 of this Part. The applicant shall submit additional information related to the emissions of regulated air pollutants sufficient to verify which Federal requirements are applicable to the facility.

(ii) Fugitive emissions from a major facility shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the definition of major facility. Source categories that must include fugitive emissions in the applicability determination for title V facility permits are identified within the definition of major facility.

(iii) Identification and description of all emission units described in the above paragraphs in sufficient detail to establish the applicability of Federal requirements.

(iv) Emissions rates of all regulated air pollutants in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(v) The following information to the extent it is needed to determine or regulate emissions in accordance with applicable requirements: Fuel types and their usage, raw materials, production rates, and operating schedules.

(vi) Identification and description of air pollution control equipment and compliance monitoring devices or activities required under the Clean Air Act.

(vii) Enforceable limitations on facility operation restricting emissions, including federally enforceable emission caps, or any work practice standards, where applicable, for all regulated air pollutants.

(viii) Other information required by any applicable requirement.

(ix) Sample or actual calculations on which the information in subparagraphs (i) through (viii) of this paragraph is based.

(x) A process flow diagram detailing which process emissions and emission sources exhaust from which emission point.

(xi) A description of each emission point associated with each emission unit that includes the following parameters: stack height (ft), stack height above building (ft), inside stack diameter (in), exit temperature (degrees F), exit velocity (ft/sec), exit flow (acfm), distance from the emission point to the

property line (ft) and NYTM coordinates.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements.

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other requirements of the act or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable Federal requirements and a description of any proposed exempt activities and/or emission units.

(7) Information necessary to define operational flexibility proposed in accordance with section 201-6.4 of this Subpart.

(8) A compliance plan for all emission source activities subject to applicable requirements that contains the following:

(i) A description of the compliance status of the emission source activity with respect to all applicable requirements.

(ii) A description of applicable requirements as follows:

(‘a’) For applicable requirements with which the facility is in compliance, a statement that the facility will continue to comply with such requirements.

(‘b’) For applicable requirements that will become effective during the permit term, a statement that the facility will meet such requirements on a timely basis.

(‘c’) For applicable requirements for which the facility is not in compliance at the time of permit issuance, a narrative description of how the facility will achieve compliance with such requirements.

(iii) A compliance schedule as follows:

(‘a’) For applicable requirements that will become effective during the permit term, a statement that the facility will meet such requirements on a timely basis, consistent with section 201-6.4 (a)(1)(i)-(iii) of this Subpart. A statement that the facility will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(‘b’) A schedule of compliance for facilities that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the facility will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable

requirements or standards on which it is based.

(iv) A schedule for submission of certified progress reports no less frequently than every six months for facilities required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan, as defined in 40 CFR part 72, for an 'affected source', except as specifically superseded by regulations promulgated under the acid rain program with regard to the schedule and method(s) the 'affected source' will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements signed by a responsible official consistent with this section.

(ii) An identification of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department in the permit.

(iv) A statement indicating the facility's compliance status with applicable compliance assurance monitoring and compliance certification requirements of the act.

(10) 'Reserved'.

(11) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by title IV of the act.

(12) Certification by a responsible official. Any application form, report, or compliance certification submitted pursuant to the Federal title V permitting requirements under this Subpart shall contain certification of truth, accuracy, and completeness by a responsible official. This certification and any other certification required under this Subpart shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(e) 'Confidentiality'. A responsible official can request that certain information in a title V facility permit application be kept from public disclosure if it can be demonstrated to the department that the information is a trade secret. Such requests must be made in accordance with Part 616 of this Title. Information submitted to the department pursuant to Part 616 of this Title may be submitted directly to the administrator by the facility owner to determine if it is confidential pursuant to 40 CFR part 2.

(f) Applications for title V facility permit modifications and revisions generally need only supply information related to the modification or revision, provided such information includes a complete set of data on any emission units affected by the modification or revision and any facility level information required in forms developed by the department to properly ascertain the nature and extent of a modification.

(g) The facility owner or operator may not omit information from an application that is needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the permit fee amount required by



the department.

(h) The facility owner or operator may also elect to accept an emission cap in accordance with Subparts 201-4 and 201-7 of this Part in order to avoid the title V facility permit requirements of this Subpart.

#### Section 201-6.3 Application and permit review by EPA and affected states.

(a) 'Transmission of information to the administrator'. (1) The department shall provide the administrator a copy of each title V permit application, including any application for permit modification, each proposed permit, and each final title V facility permit. Accessibility to the administrator of the application, proposed permit, or final permit on the department's computer system shall be considered equivalent to the submission of these documents to the administrator by the department. The applicant may be required by the department to provide a copy of the permit application (including the compliance plan) directly to the administrator. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with the EPA national database management system.

(2) The administrator may waive the requirements of paragraph (1) of this subdivision and paragraph (b)(1) of this section for any category of emission sources (including any class, type, or size within such category) other than major facilities according to the following:

(i) by regulation for a category of emission sources nationwide; or

(ii) at the time of approval of the State program for a category of facilities covered by an individual permitting program.

(3) The department shall keep such records for five years and submit to the administrator such

information as the administrator may reasonably require to ascertain whether the State program complies with the requirements of the act or of 40 CFR part 70.

(b) 'Review by affected states'. (1) The department shall give notice of each draft permit to any affected state on or before the time that the department provides this notice to the public under the requirements of this Part or Part 621 of this Title.

(2) The department, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under section 201-6.6 of this Subpart), shall notify the administrator and affected states in writing of any refusal by the department to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on applicable requirements or the requirements of this Part.

(3) Within five working days of receipt of a complete permit modification application, the department shall meet its obligation to notify the administrator and affected states of the requested permit modification. The department promptly shall send any required notice to the administrator.

(c) 'EPA objection'. (1) The administrator may object to the issuance of any proposed permit determined by the administrator not to be in compliance with applicable requirements or requirements under this Part. No permit for which an application must be transmitted to the administrator shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(2) Any EPA objection shall include a statement of the administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The administrator will provide the permit applicant a copy of the objection.

(3) Failure of the department to do any of the following also shall constitute grounds for an objection:

(i) comply with subdivisions (a) or (b) of this section;

(ii) submit any information necessary to review adequately the proposed permit; or

(iii) process the permit under the procedures approved to meet the public participation requirements of Part 621 of this Title except for minor permit modifications.

(4) If the department fails to revise and submit a proposed permit in response to an objection within 90 days of the objection, the administrator may issue or deny the permit in accordance with the requirements of the Federal program promulgated under title V of the act.

(d) 'Public petitions to the administrator'. If the administrator does not object in writing under subdivision (c) of this section, any person may petition the administrator within 60 days after the expiration of the administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the administrator objects to the permit as a result of a petition filed under this paragraph, the department shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the department has

issued a permit prior to receipt of an EPA objection under this paragraph, the administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in section 201-6.6(e) of this Subpart, except in unusual circumstances, and the department may thereafter issue only a [revised] modified permit that satisfies EPA's objection. In any case, the facility owner and/or operator will not be in violation of the requirement to have submitted a timely and complete application.

#### Section 201-6.4 Standard permit requirements.

(a) 'General conditions'. With the exception of subdivision (f) of this section the provisions contained in this Subpart are considered standard solely for the Federal portion of the title V facility permit. The operational flexibility provisions under subdivision (f) of this section shall be available under both State and Federal portions of the title V facility permit. Each title V facility permit issued under this Part shall include the following standard provisions:

(1) All Federal emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(i) The origin of and authority for each term or condition, and any difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) Any permit containing the department's determination that an alternative emission limit constitutes compliance with a regulation in the State implementation plan shall contain provisions to ensure that the resulting emission limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures. The department's determination that an emission source is eligible for an alternative emission limit can be made in the permit issuance, renewal or significant modification process. Permits may only include alternative emission limits if provided for in the State implementation plan and if the alternative emission limit is determined by the department to be

equivalent to the limit in the State implementation plan.

(iii) If an existing facility has installed best available control technology (as defined in section 169[3] of the act), or technology required to meet a lowest achievable emission rate (as defined in section 171[3] of the act), prior to the promulgation of an applicable MACT or GACT standard to such stationary source, per section 112(d) and (j) of the act, for the same hazardous air pollutant (or stream of hazardous air pollutants) it shall not be required to comply with such standard until the date five years after the date on which installation or reduction has been achieved, as determined by the department.

(2) The permittee must comply with all conditions of the title V facility permit. Any permit non-compliance constitutes a violation of the act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(3) The permit may be modified, revoked, suspended, reopened and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(4) The owner or operator shall furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the administrator along with a claim of confidentiality, if the administrator initiated the request for information or otherwise has need of it.

(5) It is not a defense for an owner or operator in an enforcement action to claim that it would have been

necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(6) The permit does not convey any property rights of any sort, or any exclusive privilege.

(7) The owner or operator of a facility shall pay fees to the department consistent with the fee schedule authorized by Subpart 482-2 of this Title.

(8) The department or an authorized representative shall be allowed upon presentation of credentials and other documents as may be required by law to:

(i) enter upon the permittee's premises where a facility subject to the permitting requirements of this Subpart is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) inspect at reasonable times any emission sources, equipment (including monitoring and air pollution control equipment), practices, and operations regulated or required under the permit; and

(iv) sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(9) A severability clause to insure the continued validity of the remaining various permit requirements

in the event of a challenge to any portions of the permit.

(b) 'Permit conditions for monitoring'. Each title V facility permit issued under this Part shall include the following provisions pertaining to monitoring:

(1) all emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods for compliance assurance monitoring as required by the act shall be specified in the permit;

(2) where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit shall specify the periodic monitoring sufficient to yield reliable data from the relevant time periods that are representative of the major facility's compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirements; and

(3) as necessary, requirements concerning the use, maintenance, and installation of monitoring equipment or methods.

(c) 'Permit conditions for recordkeeping and reporting of compliance monitoring'. (1) The following information must be included in records and reports:

(i) the date, place as defined in the permit, and time of any required sampling or measurements;

(ii) the date(s) any required analyses were performed;

(iii) the company or entity that performed any required analyses;

(iv) the analytical techniques or methods used including quality assurance and quality control procedures if required;

(v) the results of such analyses including quality assurance data where required;

(vi) the operating conditions as existing at the time of any required sampling or measurement;

(vii) any deviation from permit requirements must be clearly identified; and

(viii) reports must be certified by a responsible official, consistent with section 201-6.2 of this Subpart.

(2) Records of all monitoring data and supporting information must be retained for a period of at least five years from the date of the monitoring, sampling, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, all quality assurance information and copies of all reports required by the permit.

(3) The permit shall incorporate all applicable Federal reporting requirements which must include the following:

(i) electronic submittal of reports of any required monitoring in a format acceptable to the department at least every six months; and



(ii) notification and reporting of permit deviations and incidences of noncompliance stating the probable cause of such deviations, and any corrective actions or preventive measures taken. If the permittee seeks to have a violation excused as provided in section 201-1.4 of this Part, the permittee shall report such violations as required under section 201-1.4(c) of this Part. In order to have a violation of a Federal regulation (such as a new source performance standard or national emissions standard for hazardous air pollutants) excused, the specific Federal regulation must provide for an affirmative defense during start- up, shutdowns, or malfunctions [or upsets]. All other permit deviations shall only be reported as required under subparagraph (i) of this paragraph, unless the department specifies a different reporting requirement within the permit.

(d) ‘Compliance schedules’. Each title V facility permit issued shall contain the following provisions for compliance:

(1) The permit shall include a provision requiring compliance with the schedule proposed pursuant to section 201-6.2 of this Subpart.

(2) Where any performance or emission standard or other requirement is established for a facility prior to the issuance of a permit, the permit may contain a compliance schedule requiring the facility to achieve compliance as soon as practicable but not later than the time required by the act or an applicable requirement.

(3) Any document (including reports) required by a title V permit shall contain a certification by a responsible official as set forth in section 201-6.2 of this Subpart that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and

complete.

(4) Progress reports consistent with an applicable schedule of compliance and are to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the department. Such progress reports shall contain the following:

(i) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(e) 'Compliance certification'. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(1) the frequency, not less than annually or more frequent periods as specified in the applicable requirement or by the department, of the electronic submissions of compliance certifications;

(2) a means for assessing or monitoring the compliance of the facility with its emission limitations, standards, and work practices;

(3) a requirement that the compliance certification include the following:

(i) the identification of each term or condition of the permit that is the basis of the certification;

(ii) the compliance status;

(iii) whether compliance was continuous or intermittent;

(iv) the method(s) used for determining the compliance status of the facility, currently and over the reporting period consistent with subdivision (b) of this section;

(v) such other facts as the department shall require to determine the compliance status of the facility; and

(vi) all compliance certifications shall be submitted to the department and to the administrator and shall contain such other provisions as the department may require to ensure compliance with all applicable requirements.

Existing Subdivision 201-6.4(f) is deleted. A new Subdivision 201-6.4(f) is added as follows:

(f) 'Operational Flexibility'. Each Title V permit shall contain a provision stating that no permit modifications will be required for changes that are provided for in the permit. Such changes may be made without a permit modification if the changes are not modifications under any provision of Title I of the Act and do not exceed, or cause the facility to exceed, an emissions cap or limitation in the permit. Any compliance certifications, record keeping, or reporting required by the Title V facility permit must incorporate and consider any approved changes made pursuant to this Subdivision.

(1) Alternate operating scenarios. The owner or operator of a major facility may apply for a range of

conditions to allow for the flexibility to operate under more than one operating scenario. The facility owner or operator shall identify each proposed alternate operating scenario in the Title V facility permit application, as described in Subpart 201-6.2 of this Part. Each proposed alternate operating scenario shall be described in sufficient detail to allow the department to assess the control requirements, determine compliance with applicable requirements, and maintain the department's source inventory. Each approved alternate operating scenario shall be included in the Title V facility permit. Upon issuance of the permit, operation under each proposed alternate operating scenario is authorized without a permit modification. The facility owner or operator must record the duration of operation under each operating scenario in a log at the facility and note any changes from one operating scenario to another. Operational records kept pursuant to this paragraph shall be maintained at the facility for a period of at least five years.

(2) 'Protocol'. (i) The owner or operator of a major facility may develop and propose, as part of the Title V facility permit application, a protocol to allow for future physical or operational changes to be made without the need for a permit modification. Each protocol must include provisions for evaluating potential changes for compliance with the following criteria:

('a') all applicable requirements with which the new or changed operation or emission source must comply must already exist in the facility's Title V permit; and

('b') the change is not part of a project that results in a significant net emissions increase as described in Part 231 of this Title.

(ii) Each approved protocol shall be included in the Title V facility permit. Upon issuance of the permit, the facility owner or operator is authorized to make any changes pursuant to the approved protocol without the need for a permit modification provided that the facility owner or operator supplies

the department with written notification as required by Paragraph (3) of this Subdivision at least fifteen days in advance of making the proposed changes.

(3) 'Notifications'. The facility owner or operator must notify the department in writing at least fifteen days in advance of making any change pursuant to Paragraph (2) of this Subdivision. The department shall respond in writing with a determination within 15 days of receipt of the notification. Notifications made pursuant to this paragraph shall contain the following information:

(i) Identification of the emission unit, process(es), emission source(s), and emission point(s) affected by the proposed change with any applicable revisions to the emission unit structure;

(ii) Description of the proposed change, including the operating parameters affected;

(iii) Identification and description of any emission control device or technology that will be used;  
and

(iv) Documentation of the proposed change's compliance with respect to all applicable requirements, including the following:

('a') Calculations demonstrating the emission rate potential and maximum projected annual actual emission rates for all contaminants affected by the change;

('b') Documentation demonstrating that the change is not subject to the New Source Review requirements of Part 231 of this Title;

('c') Identification and evaluation of all state and federal regulations applicable to the proposed change;

(‘d’) Any additional operating and record keeping procedures necessary to ensure compliance with all applicable requirements; and

(‘e’) Any other relevant information used for the evaluation of the proposed change under the protocol.

(4) The department reserves the right to require a permit modification to impose applicable requirements or permit conditions if it determines that changes proposed pursuant to Paragraph (2) of this Subdivision do not meet the criteria described in Paragraph (2) of this Subdivision, or that the changes may have a significant air quality impact. In such cases, the department shall require that the facility owner or operator not undertake the proposed changes until a permit modification is issued. The department’s determination shall include a listing of any additional information necessary to complete its review of the proposed changes.

(5) Changes made pursuant to the provisions of this Subdivision are not subject to the permit shield described in Section 201-6.4(g) of this Subpart until they are incorporated into the facility’s Title V facility permit.

(6) ‘Reserved’.

(g) ‘Permit shield’. (1) Except as otherwise provided in this Subpart, the department shall include a provision in the title V permit stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance. This permit shield applies provided the applicable requirements are included and are specifically identified in the permit or the department, in acting on the permit application or [revision] modification, determines in writing that other requirements specifically identified are not applicable to the major facility, and the permit includes the

determination or a concise summary thereof.

(2) Nothing herein shall preclude the department from [revising] modifying or revoking the permit pursuant to Part 621 of this Title or from exercising its summary abatement authority, or alter or affect the following:

(i) the ability of the department to seek to bring suit on behalf of the State of New York, or the administrator to seek to bring suit on behalf of the United States, to immediately restrain any person causing or contributing to pollution presenting an imminent and substantial endangerment to public health, welfare or the environment to stop the emission of air pollutants causing or contributing to such pollution;

(ii) the liability of an owner or operator of a title V facility for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) the applicable requirements of title IV of the act; or

(iv) the ability of the administrator to obtain information from a facility owner or operator concerning the ability to enter, inspect and monitor the facility.

(h) 'Term of permits'. The following time periods shall apply to the term of title V facility permits:

(1) Periods of up to five years for title V facility permits and general permits for facilities subject to this Subpart.

(2) A fixed term of five years for "affected sources." Title V permits for "affected sources" will be

issued in such a manner as to eliminate inconsistencies between the expiration of the title V permit and the effective dates of applicable requirements under title IV of the act.

(i) ‘Reopening for cause’. (1) A title V permit shall be reopened and [revised] modified under any of the following circumstances:

(i) When additional applicable requirements under the act become applicable to a title V facility with a remaining permit term of three or more years, a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended by the department pursuant to the provisions of section 201- 6.6 of this Subpart.

(ii) The department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(iii) The department or the administrator determines that the title V permit must be [revised] modified or reopened to assure compliance with applicable requirements.

(iv) Additional requirements (including excess emissions requirements) become applicable to an “affected source” under the Acid Rain Program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(2) Proceedings to reopen and issue a title V facility permit shall be required to follow the same



procedures as apply to initial permit issuance but shall affect only those parts of the permit for which cause to reopen exists.

(3) Reopenings shall not be initiated before a notice of such intent is provided to the facility by the department at least 30 days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency.

#### Section 201-6.5 Special provisions.

(a) ‘State enforceable requirements’. The department shall specifically designate as not being federally enforceable, any terms and conditions included in the permit that are not required under the act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of section 201- 6.3 of this Subpart.

(b) ‘Additional permit conditions for facilities subject to the Acid Rain Program of title IV of the act’.

(1) Where an applicable requirement of the act is more stringent than regulations promulgated under title IV of the act, both requirements shall be incorporated into the permit, and shall be enforceable by the department and the administrator.

(2) Emissions exceeding any allowances that the facility owner/operator lawfully holds under title IV of the act or the regulations promulgated thereunder shall be prohibited by the permit. However, the facility owner or operator is not required to cover its emissions at all times. Rather, the facility owner or operator need only have sufficient sulfur dioxide allowances to cover emissions at the end of the true-up period in each year.

(3) No permit [revision] modification shall be required for increases in emissions that are authorized by

allowances acquired pursuant to title IV, provided that such increases do not require a permit [revision] modification under any other applicable requirement.

(4) No limit shall be placed on the number of allowances held by the facility. The facility owner or operator may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(5) Any allowance shall be accounted for according to the procedures established in regulations promulgated under the acid rain provisions of title IV.

(c) 'Emergency defense provision'. Each title V facility permit shall contain a condition that requires reporting of noncompliance due to an emergency as described in Section 201-1.5 of this Part. [In the event that emissions of contaminants in excess of any emission standard of this Chapter occur due to an emergency (as defined in this Part), the facility owner or operator shall report such event to the department's representative as soon as possible during normal working hours, but in any case not later than two working days after the event occurs. The report must describe the emergency, any steps taken to mitigate emissions, and corrective actions taken. Facilities desiring an affirmative defense for non-compliance with any applicable requirement due to an emergency shall follow the requirements established under the general provisions in this Part.]

#### Section 201-6.6 Permit renewal and modification.

(a) 'Expiration and renewal'. The following procedures shall apply when title V facility permits are renewed or expire:

(1) Permits that are being renewed are subject to the same procedural and review requirements,

including those for public participation and affected State and EPA review that apply to initial permit issuance. Renewal applications must include any revisions or modifications enacted during the previous permit term.

(2) Permit expiration terminates the major facility's right to operate unless a timely and complete renewal application has been submitted consistent with section 201-6.2(a) of this Subpart.

(3) If the department fails to act in a timely way in the renewal of a permit, the administrator may invoke the authority under section 505(e) of the act to terminate, modify or revoke and reissue a permit.

(4) The department shall take final action upon permit renewal within 18 months of receipt of a complete application. If the department fails to take final action on a renewal application within 18 months of the receipt of a complete application, such failure to act shall be treated as a final agency action solely for the purposes of judicial review for failure to take final action.

(5) All the terms and conditions of a permit shall be automatically continued pending final determination by the department on a request for permit renewal, provided the facility owner or operator has made a timely and complete application and paid the required fees.

(b) 'Administrative permit amendments'. (1) Administrative amendments to title V facility permits include the following changes:

(i) correction of typographical errors;

(ii) identification of a change in the name, address, or phone number of any person identified in the

permit or a similar minor administrative change at the source;

(iii) those requiring more frequent monitoring or reporting by the permittee;

(iv) those allowing for a change in ownership or operational control of a facility where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the department; or

(v) incorporation into the permit of the requirements from a State facility permit issued by the department provided that public participation pursuant to Part 621 of this Title, and the EPA and affected State review process for the state facility permit were equivalent to the review process and compliance requirements necessary for issuance of a title V facility permit.

(2) the request for an administrative permit amendment shall be reviewed and acted upon by the department in accordance with the time frames and procedures established [under section 621.13] in Part 621 of this Title and subparagraph (i) of this paragraph. Administrative permit amendments for the purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the act. The department may incorporate such changes into the permit without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(i) Within 15 days of receipt of a request for an administrative permit amendment, the department shall take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made

pursuant to this section.

(ii) The department shall make a copy of the revised permit available to the administrator.

(iii) The owner or operator of a facility may implement the changes addressed in the request for an administrative amendment after 15 days from receipt of the request by the department.

(3) The department shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in section 201-6.4 of this Subpart. The department shall also allow such coverage for administrative permit amendments made pursuant to subparagraph (1)(v) of this subdivision, provided the state facility permit met the relevant requirements of this Part for significant permit modifications.

(c) 'Minor permit modifications'.

(1) Minor permit modification procedures may be used only for those permit modifications that do not exceed the criteria under subparagraphs (i) through (v) of this paragraph. In no case shall a facility that has been issued multiple permits be allowed to make minor permit modifications which, in the aggregate, would be a significant permit modification if the facility had been issued a single permit, unless such facility complies with all the requirements for a significant modification.

(i) Do not violate any applicable requirement.

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit and are not otherwise a significant change in the permit.

(iii) Do not require or change a case-by-case determination of a Federal emission limitation or other Federal standard, or a specific determination for portable sources causing adverse ambient impacts, or a visibility or increment analysis.

(iv) Do not seek to establish or change a permit term or condition that the facility has assumed to avoid an applicable requirement to which the emission source would otherwise be subject. Such terms and conditions include:

(‘a’) a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I of the act[, including] or Part 231 of this Title; or

(‘b’) an alternative emissions limit approved pursuant to the early reduction program under section 112 of the act.

(v) Are not modifications under any provision of title I of the act, resulting in an NSR major modification as defined and regulated under Part 231 of this Title.

(2) Notwithstanding paragraphs (1) and (9) of this subdivision, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emission trading, and other similar approaches to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by the administrator.

(3) An application for a minor permit modification shall meet the requirements of section 201-6.2(d) of

this Subpart, and shall provide the following information:

(i) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

(ii) certification by a responsible official, consistent with this Subpart, that the proposed modification meets the criteria contained herein for use of minor permit modification procedures and a request that such procedures be used;

(iii) completed forms for use in notifying the administrator and affected states; and

(iv) the major facility's suggested draft permit in a format acceptable to the department.

(4) The department will review and act on applications for minor permit modifications in accordance with timeframes and procedures established for minor projects under Part 621 of this Title. Upon application by an owner or operator for a minor permit modification, the department shall determine whether or not such application is complete within 15 days after receipt of such application and notify the applicant as required under Part 621 of this Title.

(5) The facility may proceed with the requested modification upon receipt of a notice of complete application from the department confirming that the modification is minor. If the department fails to issue such notice, the application shall be deemed complete by default on the 15th day after receipt of the application and the permittee may proceed with the requested modification on the 25th day after the date that the department received the application. After the facility or operator makes the change and until the department takes final action, or notifies the permittee that the requested modification does not meet the

minor modification criteria, or that EPA objects to the modification requested, the facility must comply with both the applicable requirements governing the change and any proposed permit terms and conditions. During this time period, the facility need not comply with the existing permit terms and conditions it seeks to modify. However, if the facility fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(6) The department shall provide the notice of complete application, or provide an alternate form of notification approved by the administrator, to the administrator and affected states on or before the date that the applicant is notified. Such notification is not required if the modification involves only emission units or permit terms and conditions that are not subject to any applicable requirement.

(7) The department must issue a final decision on a minor modification request not later than 45 days after the date that the application was complete. However, the department may not issue a final permit modification until 45 days have elapsed from the date that the department notified the administrator under paragraph (6) of this subdivision or until the administrator has notified the department that they will not object to issuance of the permit modification, whichever occurs first.

(8) The permit shield described in section 201-6.4 of this Subpart does not extend to minor permit modifications.

(9) The department may process groups of applications for minor permit modifications simultaneously.

(d) 'Significant permit modifications'. Significant permit modifications are those that are not minor permit modifications or administrative permit amendments. Every significant change in existing monitoring permit terms or conditions, and every relaxation of reporting or recordkeeping permit terms or conditions at a facility



subject to this Subpart shall be considered significant. An application for permit modification should be submitted by the owner or operator, and shall be subject to the provisions of this Subpart for new applications for a permit.

(e) 'Reopenings for cause by EPA'. (1) If the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to section 201-6.4 of this Subpart, the administrator will notify the department and the permittee of such finding in writing.

(2) The department shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The administrator may extend this 90-day period for an additional 90 days if the administrator finds that a new or revised permit application is necessary or that the department must require the permittee to submit additional information.

(3) The administrator will review the proposed determination from the department within 90 days of receipt.

(4) The department shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the administrator's objection.

(5) If the department fails to submit a proposed determination pursuant to paragraph (2) of this subdivision or fails to resolve any objection pursuant to paragraph (4) of this subdivision, the administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:

(i) providing at least 30 days' notice to the permittee in writing of the reasons for any such action.

This notice may be given during the procedures in paragraphs (1) through (4) of this subdivision;

(ii) providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

(f) 'Surrender of title V facility permits'. A source owner or operator may close down operations and surrender title V permit(s) to the department.

Section 201-6.7 Appendix A-Area Sources Regulated by National Emission Standards for Hazardous Air Pollutants Permanently Exempted from Title V Permitting.

40 CFR 63.320 Subpart M: Perchloroethylene Dry Cleaning Facilities

40 CFR 63.340 Subpart N: Chromium Electroplating

40 CFR 63.360 Subpart O: Ethylene Oxide Commercial Sterilization

40 CFR 63.460 Subpart T: Halogenated Solvent Metal Cleaning

## SUBPART 201-7

### FEDERALLY ENFORCEABLE EMISSION CAPS

#### Section 201-7.1 Emission capping in facility permits.

(a) The owner or operator of a facility subject to this Part may elect to accept federally enforceable permit conditions which restrict or cap emissions from the facility or an emission source below one or more applicable requirements or where needed to establish an emission reduction credit as defined in Part 231 of this Title.

(b) When an emission cap is desired, the facility owner or operator must submit an application for a facility permit or facility permit modification which includes the information in subdivisions (c) and (d) of this section. The facility owner or operator may also accept the conditions of a department initiated permit modification in accordance with Part 621 of this Title to establish an emission cap.

(c) A facility permit or facility permit modification application that proposes a cap must contain the following material in addition to the requirements of Subparts 201-5 or 201-6 of this Part[, whichever is applicable:

(1) a complete description of the proposed emission cap, including all background information on the emission sources and processes involved, including, but not limited to:

(i) emissions of individual regulated pollutants;

(ii) duration and frequency of emissions;

(iii) existing or proposed control equipment;

(iv) other emission sources releasing the same contaminants at the facility;

(v) calculations assessing the applicability status of the facility; and

(vi) calculations demonstrating that the cap will obviate the requirement to obtain a title V facility permit and/or comply with an applicable requirement.]

This includes a complete description of the proposed emission cap, including all background information on the emission sources and processes involved, including, but not limited to:

(1) emissions of individual regulated pollutants;

(2) duration and frequency of emissions;

(3) existing or proposed control equipment;

(4) other emission sources releasing the same contaminants at the facility;

(5) calculations assessing the applicability status of the facility; and

(6) calculations demonstrating that the cap will obviate the requirement to obtain a title V facility permit and or comply with an applicable requirement.

(d) The facility owner or operator must also include a proposed monitoring, recordkeeping, and reporting strategy that will be used to demonstrate that the emissions limitations under the proposed cap are verifiable, and enforceable, along with the proposed permit conditions. Capping methods may include: a reduction in the hours of operation; reformulations relating to the cap, the installation of control equipment; and/or making other process changes.

(e) Permits and permit modifications involving proposed emission caps under this Subpart are subject to the public notice and comment procedures required for new permit applications under Part 621 of this Title. Copies

of permits including capping conditions shall be forwarded to the administrator, unless the administrator approves an alternate procedure for reviewing such permits or exempts certain classes of permits from such review.

(f) When approved by the department, federally-enforceable conditions will be incorporated into the permit limiting emissions below those requiring a title V facility permit or compliance with a specific applicable requirement.

(g) The owner or operator of a facility subject to this section must maintain all required records on-site for a period of five years and make them available to representatives of the department upon request. Department representatives must be granted access to any facility regulated by this Subpart, during normal operating hours, for the purpose of determining compliance with this and any other State and Federal air pollution control requirements, regulations or law.

(h) On an annual basis, beginning one year after the granting of an emissions cap, the responsible official shall provide a certification to the department that the facility has operated all emission sources within the limits imposed by the emission cap. This certification shall include a brief summary of the emissions subject to the cap for that time period and a comparison to those threshold levels that would require the submission of an application for a title V facility permit, or compliance with an applicable requirement.

(i) The emission of pollutants in excess of the applicability thresholds for obtaining a title V facility permit or other applicable requirements constitutes a violation of this Part and of the act.

SUBPART 201-8  
GENERAL PERMITS

Section 201-8.1 Purpose and applicability.

(a) This Subpart is intended to implement the provisions of Environmental Conservation Law, section 19-0311 that provides for the issuance of general permits covering numerous similar emission sources or source categories for purposes of complying with title V of the act or to augment other permitting requirements under this Part. The department may issue general permits for facilities subject to the permitting requirements under Subparts 201-5 and 201-6 of this Part, except that general permits cannot be authorized for affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under title IV of the act.

(b) The department shall not issue general permits for new facilities subject to the Federal prevention of significant deterioration regulations or nonattainment area permitting regulations under Part 231 of this Title.

Section 201-8.2 Permit development and issuance criteria.

(a) The general permit will contain the conditions and requirements that apply to emission sources and processes authorized under it and any qualifying criteria or limitations on the use or eligibility of the permit.

(b) The department will provide public notice and an opportunity for comment on proposed general permits prior to issuance and in accordance with the procedures and timeframes established under Part 621 of this Title.

Section 201-8.3 Applications and approval procedures.

(a) Emission sources that qualify for a general permit must apply to the department for authorization to use the general permit in a format approved by the department.

(b) All requests for authorization to use a general permit must meet the application content requirements established under this Part or specific alternate requirements defined by the department in the general permit. When establishing alternate application requirements for general permits developed for sources subject to Subpart 201-6 of this Part, the department must ensure that such applications:

(1) meet the requirements of title V of the act; and

(2) include sufficient information to determine qualification for the general permit, and the applicant's certification of compliance with the terms and conditions of the general permit.

(c) The department will act on applications requesting use of a general permit in accordance with timeframes and procedures for minor permit projects established under Part 621 of this Title. Authorization to use the general permit shall be issued by the department in the form of a letter, an approved application, a copy of the actual general permit or other comparable documentation.

(d) The department may request that a facility that otherwise meets the criteria for a general permit as described in this Subpart obtain a State facility permit in cases where permit conditions are required to ensure the facility complies with all applicable requirements. The facility owner or operator must submit a State facility permit application as described in section 201-5.2 of this Part within six months of notification from the department.

(e) Construction of a new or modified emission source which qualifies for a general permit may not commence until the source has been issued the authorization required by the department under subdivision (c) of this section.





# SUBPART 201-9

## TABLES

Existing Subpart 201-9 is repealed. A new Subpart 201-9 is added as follows.

Table 1 - Significant Mass Emission Rates for High Toxicity Air Contaminants.

<u>CAS Number</u>	<u>Contaminant Name</u>	<u>Mass Emission Limit</u> <u>(pounds per year)</u>
<u>000050-00-0</u>	<u>Formaldehyde</u>	<u>100</u>
<u>000056-23-5</u>	<u>Carbon tetrachloride</u>	<u>100</u>
<u>000062-53-3</u>	<u>Aniline</u>	<u>1000</u>
<u>000064-67-5</u>	<u>Diethyl sulfate</u>	<u>250</u>
<u>000071-43-2</u>	<u>Benzene</u>	<u>100</u>
<u>000074-90-8</u>	<u>Hydrogen cyanide</u>	<u>100</u>
<u>000075-01-4</u>	<u>Vinyl chloride</u>	<u>100</u>
<u>000075-07-0</u>	<u>Acetaldehyde</u>	<u>1000</u>
<u>000075-21-8</u>	<u>Ethylene oxide</u>	<u>25</u>
<u>000075-44-5</u>	<u>Phosgene</u>	<u>500</u>
<u>000077-78-1</u>	<u>Dimethyl sulfate</u>	<u>250</u>
<u>000078-87-5</u>	<u>Propylene dichloride</u>	<u>1000</u>
<u>000079-00-5</u>	<u>1,1,2 trichloroethane</u>	<u>100</u>
<u>000079-01-6</u>	<u>Trichloroethylene</u>	<u>500</u>
<u>000079-06-1</u>	<u>Acrylamide</u>	<u>10</u>
<u>000079-11-8</u>	<u>Chloroacetic acid</u>	<u>1000</u>
<u>000079-34-5</u>	<u>1,1,2,2-tetrachloroethane</u>	<u>1000</u>

<u>CAS Number</u>	<u>Contaminant Name</u>	<u>Mass Emission Limit</u> (pounds per year)
<u>000079-46-9</u>	<u>2-nitropropane</u>	<u>5000</u>
<u>000091-94-1</u>	<u>3,3'-dichlorobenzidine</u>	<u>5</u>
<u>000092-87-5</u>	<u>Benzidine</u>	<u>0.1</u>
<u>000095-53-4</u>	<u>O-toluidine</u>	<u>100</u>
<u>000096-45-7</u>	<u>Ethylene thiourea</u>	<u>100</u>
<u>000100-44-7</u>	<u>Benzyl chloride</u>	<u>25</u>
<u>000106-93-4</u>	<u>1,2-dibromoethane</u>	<u>5</u>
<u>000106-94-5</u>	<u>1-bromopropane</u>	<u>500</u>
<u>000106-99-0</u>	<u>1,3-butadiene</u>	<u>25</u>
<u>000107-02-8</u>	<u>Acrolein</u>	<u>25</u>
<u>000107-06-2</u>	<u>1,2-dichloroethane</u>	<u>100</u>
<u>000107-13-1</u>	<u>Acrylonitrile</u>	<u>25</u>
<u>000107-18-6</u>	<u>Allyl alcohol</u>	<u>500</u>
<u>000109-86-4</u>	<u>2-methoxy ethanol</u>	<u>5000</u>
<u>000118-74-1</u>	<u>Hexachlorobenzene</u>	<u>5</u>
<u>000122-66-7</u>	<u>Diphenyl hydrazine</u>	<u>10</u>
<u>000127-18-4</u>	<u>Perchloroethylene</u>	<u>1000</u>
<u>000302-01-2</u>	<u>Hydrazine</u>	<u>0.1</u>
<u>000542-75-6</u>	<u>1,3-dichloropropene</u>	<u>500</u>
<u>000593-60-2</u>	<u>Vinyl bromide</u>	<u>500</u>
<u>000625-31-0</u>	<u>4-penten-2-ol</u>	<u>500</u>
<u>001336-36-3</u>	<u>Polychlorinated biphenyls (PCBs)</u>	<u>1</u>

<u>CAS Number</u>	<u>Contaminant Name</u>	<u>Mass Emission Limit</u> (pounds per year)
<u>001395-21-7</u>	<u>Subtilisin</u>	<u>NA*</u>
<u>001746-01-6</u>	<u>2,3,7,8 TCDD TEF</u> <u>Polychlorinated Dibenzodioxins</u> <u>Polychlorinated Dibenzofurans</u>	<u>0.0001</u>
<u>002465-27-2</u>	<u>Auramine</u>	<u>0.1</u>
<u>007440-62-2</u>	<u>Vanadium</u>	<u>25</u>
<u>007550-45-0</u>	<u>Titanium tetrachloride</u>	<u>0.1</u>
<u>007784-42-1</u>	<u>Arsine</u>	<u>10</u>
<u>009014-01-1</u>	<u>Subtilisin, fermentation product</u>	<u>NA*</u>
<u>029082-74-4</u>	<u>Octachlorostyrene</u>	<u>NA*</u>
-	<u>Arsenic compounds</u>	<u>1</u>
	<u>Beryllium compounds</u>	<u>1</u>
	<u>Brominated Flame Retardants**</u>	<u>100</u>
-	<u>Cadmium compounds</u>	<u>1</u>
-	<u>Chromium compounds</u>	<u>250</u>
	<u>Chromium (VI) compounds</u>	<u>0.1</u>
-	<u>Diisocyanate compounds</u>	<u>100</u>
	<u>Lead compounds</u>	<u>5</u>
-	<u>Manganese compounds</u>	<u>10</u>
-	<u>Mercury compounds</u>	<u>5</u>
-	<u>Nickel compounds</u>	<u>10</u>
-	<u>Pesticide, herbicide, rodenticide, insecticide***</u>	<u>NA*</u>

<u>CAS Number</u>	<u>Contaminant Name</u>	<u>Mass Emission Limit</u> (pounds per year)
-	<u>Polycyclic organic matter (POM)</u>	<u>1</u>
-	<u>Polytetrafluoroethylene (decomposition)</u>	<u>NA*</u>

\* Facilities emitting these compounds are ineligible to register and must apply for an air state facility permit

\*\*Including but not limited to Polybrominated diphenyl ethers (PBDEs), Tetrabromobisphenol A (TBBPA),

Hexabromocyclododecane (HBCD)

\*\*\* Aldrin/Dieldrin (000309-00-2), Chlordane (000057-74-9 and 012789-03-6), DDE (000072-55-9), DDT

(000050-29-3), Heptachlor (000076-44-8), Isodrin (000465-73-6),

Methoxychlor (000072-43-5), Pendimethalin (040487-42-1),

Pentachlorobenzene (000608-93-5), (000079-94-7), Toxaphene (008001-35-2), Trifluralin (001582-09-8)

## SUBPART 201-10

### SEVERABILITY

#### Section 201-10.1 Severability

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

PART 200

GENERAL PROVISIONS

(Subdivisions 200.1(a) through 200.1(k) remain unchanged.)

(l) 'Combustion installation'. An installation, consisting of a single furnace, device, engine, or turbine in which fossil fuel, [and/or] wood, and/or other solid, liquid, or gaseous fuel is burned with air or oxygen and the air contaminant emissions include only those products resulting from:

(1) Combustion of the fuel;

(2) Additives or impurities in the fuel; and

(3) Material introduced for the purpose of altering air contaminant emissions.

(Subdivisions 200.1(m) through 200.1(cp) remain unchanged.)

(cq) 'Emergency power generating stationary internal combustion engine'. A stationary internal combustion engine that operates as a mechanical or electrical power source only when the usual supply of power is unavailable, and operates for no more than 500 hours per year. The 500 hours of annual operation for the engine include operation during emergency situations, routine maintenance, and routine exercising (for example, test firing the engine for one hour a week to ensure reliability). If a state disaster emergency is declared pursuant to Section 28 of the New York State Executive Law, the 500-hour limitation is suspended for the duration of the state disaster emergency. A stationary internal combustion engine used for peak shaving

generation or demand response programs is not an emergency power generating stationary internal combustion engine.

(Subdivisions 200.1(cr) through 200.1(cx) remain unchanged.)

(cy) ‘Fossil fuel’. Natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

(cz) ‘Furnace’. Any device (excluding internal combustion engines and gas turbines) that combusts fossil fuel, wood, and/or other solid, liquid, or gaseous fuel for any purpose and whose emissions to the outdoor atmosphere only include the products of combustion from the fuel.

(Sections 200.2 through 200.8 remain unchanged)

Section 200.9, Table 1 is amended to read as follows:

201-2.1(b)(15)	40 CFR Part 72 Subpart B (July 1, 2008)	*
201-2.1(b)(21)	Standard Industrial Classification Manual (1987)	*****
	Clean Air Act, 42 U.S.C. Section 111 as amended by Public Law 101-549 (November 15, 1990)	**
	Clean Air Act, 42 U.S.C. Section 112 as amended by Public Law 101-549 (November 15, 1990)	**
201-3.2(c)(39)	40 CFR Part 63 Subpart T (July 1, 2009)	*
201-3.3(c)(43)	40 CFR Part 61 Subpart M (July 1, 2007)	*

201-3.3(c)(94)	United States Department of Health and Human Services' [Twelfth Annual] <u>Fourteenth</u> Report on Carcinogens [(2011)] <u>(2016)</u>	*****
201-6.1(a)(2)	40 CFR Part 60 (July 1, 2003)	*
201-6.1(a)(3)	40 CFR Part 61 (July 1, 2007)	*
	40 CFR Part 63 (July 1, 2009)	*
201-6.1(b)(3)(i)	40 CFR Part 60 Subpart AAA (July 1, 2003)	*
201-6.1(b)(3)(ii)	40 CFR Part 61 Subpart M (July 1, 2007)	*
201-6.2(d)(8)(v)	40 CFR Part 72 (July 1, 2008)	*





PART 212

PROCESS OPERATIONS

SUBPART 212-1

GENERAL PROVISIONS

Section 212-1.1 Applicability.

(a) Part 212 applies to process emission sources and/or emission points associated with a process operation, unless excepted from the provision of this Part pursuant to Section 212-1.4 of this Subpart:

(1) upon issuance of a new or modified permit or registration for a facility containing process emission sources and/or emission points.

(2) Upon issuance of a renewal for an existing permit or registration.

(b) Any emission limitation or other requirements in effect prior to the effective date of this Part shall remain in effect until issuance of a modified permit or registration or renewal of the permit or registration.

Section 212-1.2 Definitions.

(a) For the purpose of this Part, the general definitions in Part 200 of this Title apply.

(b) For the purpose of this Part, the following definitions also apply:

(1) 'Aggregate.' Any hard, inert material used for mixing in graduated particles or fragments. Includes sand, gravel, crushed stone, slag, rock dust or powder.

(2) 'Animal [Oncogens] Oncogenes.' Chemicals for which oncogenicity has been demonstrated in at least one mammalian species.

(3) 'Carcinogenic to Humans'. Chemicals where there is convincing epidemiological evidence of a causal association between human exposure and cancer as described by the United States Environmental Protection Agency Guidelines for Carcinogen Risk Assessment.

(4) 'Criteria Air Contaminant.' Particulate matter, ground-level ozone, carbon monoxide, sulfur oxides, nitrogen dioxide. Elemental lead is a criteria air contaminant as well as a federal Hazardous Air Pollutant: elemental lead and lead compounds are also treated as a High Toxicity Air Contaminant.

(5) 'Guideline Concentrations.' Ambient air concentrations that are listed in the Division of Air Resource's Annual and Short-term Guideline Concentrations (AGC/SGC) Tables.

(6) 'Genotoxic Chemicals'. Chemicals that have been shown to damage DNA or chromosomes in in-vitro and/or in-vivo short-term tests.

(7) 'Hot mix asphalt.' Paving material that is produced by mixing hot dried aggregate with heated asphalt cement.

(8) 'Hot Mix Asphalt Production Plant.' A facility comprised of process operations to produce paving material manufactured by mixing hot dried aggregate with heated asphalt cement.

(9) 'High Toxicity Air Contaminants [(HTACs)].' Chemicals that are carcinogenic to humans; or likely to be carcinogenic to humans; or chemicals that are known to cause adverse outcomes in humans for reproductive and developmental effects; or chemicals that elicit irreversible or progressive detrimental effects that have been observed in humans; or chemicals meeting the definition of Persistent and Bioaccumulative in this section; or any chemicals meeting the following LC<sub>50</sub> or LD<sub>50</sub> values:

'(i)' LD<sub>50</sub> (dermal) is equal or less than 200 mg/kg; or

'(ii)' LC<sub>50</sub> (inhalation) is equal or less than 200 ppm; or

'(iii)' LD<sub>50</sub> (oral) is equal or less than 50 mg/kg.

(10) 'Low NO<sub>x</sub> burner.' A burner designed to reduce flame turbulence by the mixing of fuel and air and by establishing fuel-rich zones for initial combustion, thereby reducing the formation of nitrogen oxides (NO<sub>x</sub>).

(11) 'Lethal Dose Fifty or Lethal Concentration Fifty (LD<sub>50</sub> or LC<sub>50</sub>).' The median administered dose that will kill 50 percent of a tested mammalian specie.

(12) 'Likely to be Carcinogenic in Humans.' Chemicals with evidence indicating oncogenicity in two mammalian species; or one mammalian species, independently reproduced; or one mammalian species, to an unusual degree with respect to incidence, latency period, site, tumor type or age at onset; or one mammalian species, supported by positive results in short-term tests which are indicative of potential oncogenic activity.

(13) 'Low Toxicity Air Contaminant'. Chemicals that can cause irritation or reversible effects to sensitive members of the population, and which do not meet the criteria for classification as a High Toxicity

or Moderate Toxicity Air Contaminants.

(14) 'Moderate Toxicity Air Contaminants'. Chemicals that are animal [oncogens] oncogenes; or chemicals that are known to cause adverse outcomes in animal species for reproductive and developmental effects; or genotoxic chemicals; or chemicals that when inhaled have caused significant chronic adverse effects in test animals, or any chemicals meeting the following LC<sub>50</sub> or LD<sub>50</sub> values:

‘(i)’ LD<sub>50</sub> (dermal) is greater than 200 mg/kg but less than 1,000 mg/kg; or

‘(ii)’ LC<sub>50</sub> (inhalation) is greater than 200 ppm but less than 2,000 ppm; or

‘(iii)’ LD<sub>50</sub> (oral) is greater than 50 mg/kg but less than 500 mg/kg.

(15) 'Overall removal efficiency.' The total reduction of VOC emissions considering the efficiency of both the capture system and of the subsequent destruction and/or removal of these air contaminants by the control equipment prior to their release into the outdoor atmosphere.

(16) 'Persistent and Bioaccumulative.' Where chemicals that are emitted to the air persist in the environment, and are estimated to have a half-life of greater than or equal to six months in water or soil or sediments; or where chemicals have the ability to bioconcentrate or biomagnify in the food chain and have bioconcentration factors (BCFs) greater than 1,000 in fish or shellfish.

(17) 'Persistent and Bioaccumulative (PB) Trigger.' A yearly mass emission limit equaling 10 times the mass emission listed in Section 212-2.2 of this Part for all corresponding persistent and bioaccumulative air contaminants emitted from the facility.

(18) 'Process operation.' Any industrial, institutional, commercial, agricultural or other activity,

operation, manufacture or treatment in which chemical, biological and/or physical properties of the material or materials are changed, or in which the material(s) is conveyed or stored without changing the material(s) if the conveyance or storage system is equipped with a vent(s) and is non-mobile, and that emits air contaminants to the outdoor atmosphere. A process operation does not include an open fire, operation of a combustion installation, or incineration of refuse other than by-products or wastes from a process operation(s).

(19) ‘Process Emission Source.’ Any apparatus, contrivance or machine, including any appurtenant exhaust system or air cleaning device capable of causing emissions of any air contaminant to the outdoor atmosphere from a process operation.

(20) ‘Toxic - Best Available Control Technology (T-BACT).’ The maximum degree of reduction or the emission limitation for each non-criteria air contaminant that the department determines is achievable for a process operation on a case-by-case basis. The department will determine an achievable degree of reduction or emission limitation using the following parameters:

- (i) process, fuels and raw material available [and] to be used;
- (ii) engineering aspects of the application of various types of control technology which have been adequately demonstrated;
- (iii) process and fuel changes;
- (iv) respective costs of the application of all such control technologies, process changes, alternative fuels, etc.; and the
- (v) toxicity of the air contaminant.

(21) ‘Toxic Impact Assessment (TIA).’ An inhalation risk assessment that is supported by a protocol

describing the procedures to be used to predict maximum offsite ambient air concentrations.

(22) ‘Tune-up.’ Adjustments made to a burner in accordance with procedures supplied by the manufacturer (or an approved specialist) to optimize the combustion efficiency.

#### Section 212-1.3 Determination of Environmental Rating.

In accordance with the applicability requirements of Section 212-1.1 of this Part, the department will assign an environmental rating for each air contaminant emitted from each process emission source or emission point in accordance with Subdivisions (a) through (e) of this Section. The factors in Subdivisions (a) through (d) will be considered in making a determination of the environmental rating to be applied to an air contaminant pursuant to subdivision (e), Table 1 – Environmental Rating Criteria of this section.

(a) Toxic and other properties and emission rate potential of the air contaminant;

(b) location of the process emission source or emission point(s) for the air contaminant with respect to residences or other sensitive environmental receptors, taking into account the area’s anticipated growth;

(c) emission dispersion characteristics at or near the process emission source or emission point(s), taking into account the physical location of the process emission source or emission point(s) relative to the surrounding buildings and terrain; and

(d) the projected maximum cumulative impact of an air contaminant taking into account emissions from all process emission sources at the facility under review and the pre-existing ambient concentration of the air contaminant under review.

(e) Table 1 - Environmental Rating Criteria

'Rating'	'Criteria'
A	An air contaminant whose discharge results, or may result, in serious adverse effects on receptors or the environment. These effects may be of a health, economic or aesthetic nature or any combination of these.
B	An air contaminant whose discharge results, or may result in only moderate and essentially localized effects; or where the multiplicity of sources of the contaminant in any given area require an overall reduction of the atmospheric burden of that contaminant.
C	An air contaminant whose discharge may result in localized adverse effects of an aesthetic or nuisance nature.
D	An air contaminant whose discharge will not result in measurable or observable effects on receptors, nor add to an existing or predictable atmospheric burden of that contaminant which may cause adverse effects, considering properties and concentrations of the emissions, isolated conditions, stack height, and other factors.

Section 212-1.4 Exceptions.

The following process emission sources are not subject to the provisions of this Part:

(a) process emission sources that are either temporary emission sources under Section 201-1.11 of this Title [and] or process emission sources that are exempt or trivial under Sections 201-3.2 and 201-3.3 of this Title, respectively;

(b) kilns and clinker coolers in portland cement plants subject to Subpart 220-1 or glass plants subject to Subpart 220-2 of this Title, only with respect to emissions of air contaminants that are not given an A rating;

(c) process emission sources, other than kilns and clinker coolers, in a Portland cement plant, only with respect to opacity of emissions;

(d) ferrous jobbing foundry melting furnaces in operation on or prior to February 6, 1968, only with respect to particulate emissions;

(e) air contaminants subject to Part 214 of this Title, only from by-product coke oven batteries as defined in section 214.1(b)(1) of this Title. Air contaminants generated from flue gas handling, flue gas treatment, ammonia stripping and by-product recovery are subject to the requirements of this Part unless specifically defined and controlled in a New Source Performance Standard (NSPS);

(f) process emissions sources at any gasoline, petroleum, or VOC liquid storage or transfer facility that is subject to Part 229 of this Title, only with respect to emissions of VOCs that are not given an A rating;

(g) process emission sources in a sulfuric or nitric acid plant that is subject to Part 224 of this Title, only with respect to emissions of NO<sub>x</sub>, oxides of sulfur, sulfuric acid mist and smoke;

(h) process emission sources at a petroleum refinery subject to Part 223 of this Title, only with respect to sulfur compound emissions and emissions of VOCs that are not given an A rating;



(i) process emission sources with emissions of oxides of sulfur, only with respect to oxides of sulfur emissions attributable solely to sulfur in fuel;

(j) process emissions sources at a solvent metal cleaning process operation subject to Part 226 of this Title or a solvent metal cleaning process operation exempt from Part 226 of this Title [pursuant to Section 226.2,] only with respect to emissions of VOCs that are not given an A rating;

(k) process emission sources at iron and/or steel processes, with respect to emissions that are not given an A rating, subject to Part 216 of this Title;

(l)(1) process emission sources subject to Table 1 of Subpart 228-1 of this Title or process emission sources exempt from Subpart 228-1 of this Title pursuant to section 228-1.1(b), only with respect to emissions [of VOCs] that are not given an A rating;

(2) process emission sources associated with mobile equipment repair and refinishing as described in Subpart 228-1 of this Title;

(3) commercial and industrial adhesives, sealants, or primers subject to Subpart 228-2 of this Title, only with respect to emissions [of VOCs] that are not given an A rating;

(m) process emission sources with emissions of carbon monoxide or VOCs produced attributable solely to incomplete combustion of any fuel, except where material is heated, burned, combusted or otherwise chemically changed under oxygen deficient conditions by design;

(n) dry cleaning facilities subject to Part 232 of this Title;

(o) pharmaceutical and cosmetic manufacturing process operations subject to Part 233 of this Title and process operations exempt from Part 233 of this Title pursuant to Section 233.1(g), only with respect to emissions of VOCs that are not given an A rating;

(p) graphic arts process operations subject to Section 234.1(a) of this Title and graphic arts process operations exempt from Part 234 of this Title pursuant to Section 234.1(d) of this Title, only with respect to emissions of VOCs that are not given an A rating;

(q) process emissions sources at a primary aluminum reduction plant subject to Part 209 of this Title, only with respect to opacity and emissions of total fluorides;

(r) process emission sources with respect to emissions of NO<sub>x</sub> produced by catalytic or thermal oxidizers used as air pollution control equipment; and

(s) gasoline dispensing sites and transport vehicles that are subject to Part 230 of this Title;

#### Section 212-1.5 Determining applicable emission standards for process operations.

(a) In instances where air contaminants from two or more process emission sources may be simultaneously emitted to the outdoor atmosphere through a single emission point, the permissible emission rate or degree of air cleaning required is determined by using the sum of the process weights or emission rate potentials for all process emission sources.

(b) In instances where air contaminants from a single process emission source are emitted to the outdoor atmosphere through more than one emission point, the sum of the emissions from all such emission points shall not exceed the quantity that would be authorized through a single emission point.

(c) In instances where air contaminants from two or more process emission sources are emitted to the outdoor atmosphere through a single emission point and the applicable emission standard for one or more process emission sources, if vented separately to the outdoor atmosphere, is a concentration standard (grains per standard cubic foot), the permissible emission rate through such emission point shall not exceed the quantity that would be authorized if the emissions were through separate emission points.

(d) In instances where a facility owner or operator can demonstrate to the satisfaction of the department that the facility owner or operator will apply BACT for criteria air contaminants or T-BACT for non-criteria air contaminants, the department may specify a less restrictive permissible emission rate or degree of air cleaning for the process emission source or emission point than required under Subpart 212-2 of this Part.

(e)(1) A process emission source subject to a Federal NSPS under 40 CFR Part 60 (see Table 1, Section 200.9 of this Title) satisfies the requirements of this Part for the respective air contaminant regulated by the Federal standard if the facility owner or operator can demonstrate that the facility is in compliance with the relevant Federal regulation.

(2) A process emission source subject to the Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) under 40 CFR Part 61 or Part 63 (see Table 1 of Section 200.9 of this Title) satisfies the requirements of this Part for the respective air contaminant regulated by the Federal standard if the facility owner or operator can demonstrate that the process emission source is in compliance with the relevant Federal

regulation and, for those NESHAPs regulating HTACs found in Section 212-2.2, Table 2 – High Toxicity Air Contaminant List, of this Part, provide a TIA demonstrating that the maximum offsite ambient air concentration is less than the AGC/SGC or meeting the mass emission limit identified in Section 212-2.2, Table 2. Either compliance option must have actual [and that] emissions [are] less than the PB trigger for the respective air contaminant.

Facility owners or operators required to submit a TIA shall submit a protocol describing the procedures to be used to predict the maximum offsite ambient air concentration. Once the protocol is approved by the department and the TIA is conducted, the facility owner or operator shall submit a final report to the department along with the air dispersion modeling results for approval. The department requires the use of an EPA approved air dispersion model for all screening and/or refined air dispersion modeling assessments; however, screen dispersion models do not require an approved modeling protocol.

(f) Facility owners or operators whose process operations emit NO<sub>x</sub> or VOCs and meet the applicability requirements of Subpart 212-3 or Subpart 212-4 of this Part are not subject to the control provisions in Subpart 212-2 of this Part for NO<sub>x</sub> or VOCs. However, if an individual air contaminant, as a component of total VOCs, is assigned an environmental rating of A, that individual air contaminant must meet the control requirements of Subpart 212-2 of this Part.

(g) At all times, the facility owner or operator must operate and maintain all process emission sources, including the associated air pollution control and monitoring equipment, in a manner consistent with safety, good air pollution control practices, good engineering practices and manufacturers' recommendations for minimizing emissions.

#### Section 212-1.6 Limiting of Opacity.

(a) No facility owner or operator shall cause or allow emissions having an average opacity during any six consecutive minutes of 20 percent or greater from any process emission source or emission point, except for the emission of uncombined water.

(b) Upon written application by a facility owner or operator, the department may allow for a process emission source or emission point an equivalent opacity standard exceeding the opacity standard of Subdivision (a) of this Section, if the facility owner or operator can demonstrate through acceptable tests for such source that the facility is in compliance with all applicable emission limits and requirements other than the opacity standard and that the process emission source and any associated emission control equipment is being operated and maintained in a manner acceptable to the department. An equivalent opacity standard for a process emission source will only be allowed where Reasonably Available Control Technology (RACT), as determined by the department, has been utilized for air contaminants contributing to opacity. In such cases, the facility owner or operator shall not cause or allow emissions to exceed the equivalent opacity standard.

#### Section 212-1.7 Sampling and Monitoring.

(a) Facility owners and/or operators of a process emission source required by the department to demonstrate compliance with this Part may be required to conduct capture efficiency and/or stack emissions testing using acceptable and approved procedures pursuant to Part 202 of this Title.

(b) Facility owners and/or operators of any emission source equipped with either a thermal or catalytic oxidizer, fixed bed carbon absorption unit or refrigerated condenser must install continuous monitors and data recorders for the applicable parameters listed in Paragraphs (b)(1) through (b)(5) of this Subdivision prior to start-up of a new or modified process emission source(s). Continuous monitors must be operated at all times

when the associated emission control equipment is operating except during any quality assurance and routine maintenance activities. Each monitor must be operated according to a quality assurance program approved by the department. Alternative monitoring methods may be employed subject to department approval.

(1) the exhaust gas temperature from thermal or catalytic oxidizer;

(2) the temperature rise across catalytic oxidizer beds;

(3) the VOC outlet concentrations from fixed-bed carbon adsorption units;

(4) the outlet gas temperature from refrigerated condensers; or

(5) any other parameters required by conditions in the State Facility or Title V Permit for the process emission source.

(c) For the purpose of ascertaining compliance with this Part, the department may obtain or require the facility owner or operator of an emission source to provide a sample of any type 5 or 6 refuse (see Table 1 of Appendix 2 of Part 219 of this Title for classifications of refuse) where such refuse is an input material of the process operation.

(d) Any facility that was subject to this Section after June 1, 1995, will remain subject to these provisions for all applicable parameters listed in Paragraphs (b)(1) through (b)(5) of this section.

## SUBPART 212-2

### ALLOWABLE EMISSIONS

## Section 212-2.1. Requirements.

Emissions of air contaminants to the outdoor atmosphere from any process emission source or emission point are restricted as follows:

(a) for an air contaminant listed in Section 212-2.2 Table 2 – High Toxicity Air Contaminant List, of this Part, the facility owner or operator shall either limit the actual annual emissions from all process operations at the facility so as to not exceed the mass emission limit listed for the individual HTAC; or demonstrate compliance with the air cleaning requirements for the HTAC as specified in Subdivision 212-2.3(b), Table 4 – Degree of Air Cleaning Required for Non-Criteria Air Contaminants, of this Part for the environmental rating assigned to the contaminant by the department.

(b) for any air contaminant not listed on Table 2, unless it is a solid particulate described in subdivision (c) of this Section, the facility owner or operator shall not allow emissions of an air contaminant to violate the requirements specified in Subdivision 212-2.3(a), Table 3 – Degree of Air Cleaning Required for Criteria Air Contaminants of this Subpart, or Subdivision 212-2.3(b), Table 4 – Degree of Air Cleaning Required for Non-Criteria Air Contaminants of this Subpart, as applicable, for the environmental rating assigned to the contaminant by the department.

(c) for a solid particulate assigned an environmental rating of B or C emitted from a process emission source, the facility owner or operator shall not allow emissions of particulate to exceed the requirements specified in Subpart 212-2.4 of this Part.

## Section 212-2.2 Table 2 – High Toxicity Air Contaminant List

CAS Number	Contaminant Name	Mass Emission Limit (pounds per year)	PB Trigger Applicable
000050-00-0	Formaldehyde	100	
000056-23-5	Carbon tetrachloride	100	
000062-53-3	Aniline	1000	
000064-67-5	Diethyl sulfate	250	
[000067-66-3]	[Chloroform]	[100]	
000071-43-2	Benzene	100	
000074-90-8	Hydrogen cyanide	100	
000075-01-4	Vinyl chloride	100	
000075-07-0	Acetaldehyde	1000	
000075-21-8	Ethylene oxide	25	
000075-44-5	Phosgene	500	
000077-78-1	Dimethyl sulfate	250	
000078-87-5	Propylene dichloride	1000	
000079-00-5	1,1,2 trichloroethane	100	
000079-01-6	Trichloroethylene	500	
000079-06-1	Acrylamide	10	
000079-11-8	Chloroacetic acid	1000	
000079-34-5	1,1,2,2-tetrachloroethane	1000	
000079-46-9	2-nitropropane	5000	
000091-94-1	3,3'-dichlorobenzidine	5	



CAS Number	Contaminant Name	Mass Emission Limit (pounds per year)	PB Trigger Applicable
000092-87-5	Benzidine	0.1	
000095-53-4	O-toluidine	[5000] <u>100</u>	
000096-45-7	Ethylene thiourea	100	
000100-44-7	Benzyl chloride	25	
000106-93-4	1,2-dibromoethane	5	
<u>000106-94-5</u>	<u>1-bromopropane</u>	<u>500</u>	
000106-99-0	1,3-butadiene	25	
000107-02-8	Acrolein	25	
000107-06-2	1,2-dichloroethane	100	
000107-13-1	Acrylonitrile	25	
000107-18-6	Allyl alcohol	500	
000109-86-4	2-methoxy ethanol	5000	
000118-74-1	Hexachlorobenzene	5	Yes
000122-66-7	Diphenyl hydrazine	10	
000127-18-4	Perchloroethylene	1000	
000302-01-2	Hydrazine	0.1	
000542-75-6	1,3-dichloropropene	500	
000593-60-2	Vinyl bromide	500	
000625-31-0	4-penten-2-ol	500	
001336-36-3	Polychlorinated biphenyls (PCBs)	1	Yes

CAS Number	Contaminant Name	Mass Emission Limit (pounds per year)	PB Trigger Applicable
001395-21-7	Subtilisin	NA*	
001746-01-6	2,3,7,8 TCDD TEF Polychlorinated Dibenzodioxins Polychlorinated Dibenzofurans	0.0001	Yes
002465-27-2	Auramine	0.1	
007440-62-2	Vanadium	25	
007550-45-0	Titanium tetrachloride	0.1	
007784-42-1	Arsine	10	
009014-01-1	Subtilisin, fermentation product	NA*	
029082-74-4	Octachlorostyrene	NA*	Yes
	Arsenic compounds	1	
	Beryllium compounds	1	
	Brominated Flame Retardants**	100	Yes
	Cadmium compounds	[25] 1	Yes
	Chromium compounds	250	
	Chromium (VI) compounds	0.1	
	Diisocyanate compounds	100	
	Lead compounds	5	Yes
	Manganese compounds	10	
	Mercury compounds	5	Yes

CAS Number	Contaminant Name	Mass Emission Limit (pounds per year)	PB Trigger Applicable
	Nickel compounds	10	
	Pesticide, herbicide, rodenticide, insecticide***	NA*	Yes
	Polycyclic organic matter (POM)	1	Yes
	Polytetrafluoroethylene (decomposition)	NA*	

\*These HTACs are not eligible for demonstrating compliance with a mass emission limit

\*\*Including but not limited to Polybrominated diphenyl ethers (PBDEs), Tetrabromobisphenol

A (TBBPA), Hexabromocyclododecane (HBCD)

\*\*\* Aldrin/Dieldrin (000309-00-2), Chlordane (000057-74-9 and 012789-03-6), DDE

(000072-55-9), DDT (000050-29-3), Heptachlor (000076-44-8), Isodrin (000465-73-6),

Methoxychlor (000072-43-5), Pendimethalin (040487-42-1),

Pentachlorobenzene (000608-93-5), (000079-94-7), Toxaphene (008001-35-2), Trifluralin

(001582-09-8)

## Section 212-2.3 Degree of Air Cleaning Required

(a) Table 3 - Degree of Air Cleaning Required for Criteria Air Contaminants

Degree of Air Cleaning Required for Criteria Air Contaminants Gases and Liquid Particulate Emissions (Environmental Rating A, B, C or D) and Solid Particulate Emissions (Environmental Rating A or D)										
'EMISSION RATE POTENTIAL (LBS/HR)'										
Environmental  Rating	Less  than 1	≥ 1  to  10	≥ 10  to  20	≥ 20  to  100	≥ 100  to  500	≥ 500  to  1,000	≥ 1,000  to  1,500	≥ 1,500  to  4,000	≥ 4,000  to  10,000	10,000  or  greater
A	NAAQS  *	99%								
B	NAAQS  *	90%	91%	94%	96%		97%	98%	99% or greater	
C	NAAQS  *	70%	75%	85%	90%		93%	95%	98% or greater	
D	NO AIR CLEANING REQUIRED									

\* Using air dispersion modeling demonstrate that the [maximum] offsite air concentration is less than the respective National Ambient Air Quality Standard reported as the design value of the criteria pollutant.

(b) Table 4 - Degree of Air Cleaning Required for Non-Criteria Air Contaminants

Degree of Air Cleaning Required for Non-Criteria Air Contaminants Gases and Liquid Particulate Emissions (Environmental Rating A, B, C or D) and Solid Particulate Emissions (Environmental Rating A or D)					
‘EMISSION RATE POTENTIAL’					
Environmental Rating	Less than 0.1 lbs/hr and lbs/yr ≤ PB trigger	≥ 0.1 to 1 lbs/hr or lbs/yr > PB trigger	≥ 1 to 10 lbs/hr	≥ 10 to 25 lbs/hr	Greater than 25 lbs/hr
A	Guideline Concentration*	90%	99%	99.5%	99.5%
B	Guideline Concentration*			90%	
C	Guideline Concentration*			75%	
D	NO AIR CLEANING REQUIRED				

\* Using air dispersion modeling demonstrate that the maximum offsite air concentration is less than the applicable AGC/SGC

#### Section 212-2.4 Control of particulate emissions released from existing process emission sources.

(a) Emissions from any process emission source for which an application was received by the department prior to July 1, 1973 are restricted as follows:

(1) No facility owner or operator shall cause or allow emissions of particulate that exceed 0.15 grains per cubic foot of exhaust gas, expressed at standard conditions on a dry gas basis, except in instances where the determination of the permissible emission rate using process weight for a specific source category emitting solid particulate is based upon Table 5 and Table 6 of Subdivisions 212-2.5 (a) and (b) of this Subpart.

(b) The control of particulate emissions released from new and modified process emission sources. Emissions from any process emission source for which an application was received by the department after July 1, 1973 are restricted as follows:

(1) No facility owner or operator shall cause or allow emissions of particulate that exceed 0.050 grains per cubic foot of exhaust gas, expressed at standard conditions on a dry gas basis, except in instances where determination of permissible emission rate using process weight for a specific source category emitting solid particulate is based upon Table 5 and Table 6 of Subdivisions 212-2.5(a) and (b) of this Subpart.

(c) Emissions of particulates shall be measured by using the emission testing method found in 40 CFR part 60 Appendix A-3 Method 5.

#### Section 212-2.5

(a) Table 5- Process Weight Source Categories

Process Operations for which Permissible Emission Rate is Based on Process Weight:	
a.	[Stone dryers (asphalt concrete plants)] <u>'Reserved'</u>
b.	Expanded aggregate kilns (lightweight aggregate plants)
c.	Continuous process material dryers emitting solid particulates and water only
d.	Brass and bronze melting furnaces
e.	Ferro alloy production furnaces
f.	Lime kilns
g.	Glass production furnaces
h.	Graphitizing and silicon carbide furnaces
i.	Gypsum dryers
j.	Primary aluminum reduction pot lines

(b) Table 6 - Permissible Emission Rate

Process weight per hour (lb/hr)	Permissible emission rate (lb/hr)	
	Existing emission source*	New emission source or modification
100	[0.51] <u>0.52</u>	[0.51] <u>0.52</u>
500	1.5	1.5
1,000	[2.4] <u>2.5</u>	[2.4] <u>2.5</u>
5,000	[6.8] <u>7.2</u>	[6.8] <u>7.2</u>
10,000	11. <u>5</u>	11. <u>5</u>
25,000	20. <u>2</u>	20. <u>2</u>
50,000	[32] <u>33.8</u>	[32] <u>33.8</u>

75,000	[42] <u>44.3</u>	[42] <u>44.3</u>
100,000	[51] <u>53.7</u>	[51] <u>53.7</u>
250,000	<u>58.1</u>	0.030 grain per standard cubic foot of undiluted exhaust gas on a dry basis
500,000	<u>64.4</u>	
750,000	<u>68.3</u>	
1,000,000	<u>71.1</u>	
2,000,000	<u>78.2</u>	
5,000,000	<u>88.2</u>	

\* Existing emission sources are ones for which applications for permits were received prior to July 1, 1973

To determine values of permissible emission rate not shown in table:

For all process weight sources up to 100,000 lb/hr, use  $E = 0.024P^{0.67}$

For existing process weight sources in excess of 100,000 lb/hr, use

$E = (39P^{0.082}) - 50$  where E = permissible emission rate; P = process weight in lb/hr.

## SUBPART 212-3

### REASONABLY AVAILABLE CONTROL TECHNOLOGY FOR MAJOR FACILITIES

#### Section 212-3.1 Reasonably Available Control Technology for Major Facilities

(a)(1) Owners and/or operators of facilities located in the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury or New York City metropolitan area with an annual potential to emit of 25 tons or more of NO<sub>x</sub> or 25 tons or more of VOCs must comply with the requirements of this section.



(2) Owners and/or operators of facilities located outside of the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury and New York City metropolitan area with an annual potential to emit of 100 tons or more of NO<sub>x</sub> or 50 tons or more of VOCs must comply with the requirements of this section.

(3) Owners and/or operators of facilities located in the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury or New York City metropolitan area with an annual potential to emit of 25 tons or more of nitrogen oxides or facilities located outside of the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury or New York City metropolitan area with an annual potential to emit 100 tons or more of nitrogen oxides may petition the EPA for an exemption from the RACT requirements for NO<sub>x</sub> emission points in this section. The facility is eligible for the exemption if the owner and/or operator demonstrates that net ozone air quality benefits are greater in the absence of reductions of NO<sub>x</sub> from the facility. Nothing in this paragraph shall exempt owners and/or operators of facilities that petition the Environmental Protection Agency for an exemption from complying with the applicable requirements of this section by the May 31, 1995 deadline absent approval of the exemption.

(b) Owners and/or operators of emission points subject to this Part that emit NO<sub>x</sub> or VOCs located at facilities described in Subdivision (a) of this Section must submit a compliance plan to the department by October 20, 1994. The compliance plan must either include the RACT analysis required by Subdivision (c) of this Section or a plan to limit the annual potential to emit below the applicability levels pursuant to Subdivision (d) of this Section.

(c)(1) The compliance plan must identify RACT for each emission point that emits NO<sub>x</sub> for major NO<sub>x</sub> facilities or VOC for major VOC facilities. The compliance plan must identify the emission points that do not employ RACT, and a schedule for implementation of RACT must be included in the plan. A RACT analysis is not required for emission points with NO<sub>x</sub> and VOC emission rate potentials less than 3.0 pounds per hour and actual emissions in the absence of control equipment less than 15.0 pounds per day at facilities located in the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury and New York City metropolitan area. A RACT analysis is not required for emission points with NO<sub>x</sub> and VOC emission rate potentials less than 3.0 pounds per hour at facilities located outside of the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury and New York City metropolitan area. RACT as approved by the department must be implemented on each emission point subject to this section by May 31, 1995.

(2) Compliance plans that include construction of emission control equipment must include a milestone date no later than December 20, 1994 for submission of a permit to operate to the department for emission control equipment. The compliance plans must include milestone dates for commencement of construction, completion of construction, and completion of emissions testing of emission control equipment.

(3) RACT compliance plans for NO<sub>x</sub> emission points must include technically feasible control strategies to minimize NO<sub>x</sub> formation and emission control equipment alternatives. These process specific RACT demonstrations that are acceptable to the department will be submitted to the United States Environmental Protection Agency for approval as a revision to the State Implementation Plan by the department.

(4)(i) VOC emission points that are equipped with a capture system and a control device with an overall removal efficiency of at least 81 percent are equipped with reasonably available control technology.

(ii) Surface coating processes that are not subject to Part 228 of this Title which use a surface coating with a maximum VOC content of 3.5 pounds VOC per gallon as applied (minus water and excluded VOC) as calculated according to the formula in Section 228.2(b)(11) of this Title are equipped with RACT.

(iii) Where the facility owner or operator can show to the satisfaction of the department that an emission point cannot achieve an overall removal efficiency of 81 percent or use coatings not exceeding 3.5 pounds VOC per gallon as applied (minus water and excluded VOC) for reasons of technological or economic feasibility, the department may accept a lesser degree of control upon submission of satisfactory evidence that the facility owner or operator will apply reasonably available control technology. These process specific RACT demonstrations that are acceptable to the department will be submitted to the EPA for approval as a revision to the State Implementation Plan by the department.

(d) The owner or operator of any facility with federally and state enforceable conditions in a permit to operate that limits its annual potential to emit NO<sub>x</sub> and VOCs below the applicability levels of Subdivision (a) of this Section by May 31, 1995 is exempt from the RACT analysis and implementation requirements of this Section. Records must be maintained by the owner or operator at the facility on a monthly basis which verify the facility's annual actual emissions. Upon reasonable request, these records must be submitted to the department in a format acceptable to the department. An exceedance of the annual potential to emit conditions for any calendar year must be reported by the owner or operator to the department within 30 days of the end of that calendar year.

(e) Any facility that is subject to this section after May 31, 1995 will remain subject to these provisions even

if the annual potential to emit NO<sub>x</sub> or VOCs later fall below the applicability threshold.

(f) Owners and/or operators of emission points located at facilities described in Subdivision (a) of this Section that commence construction after August 15, 1994 must submit a RACT demonstration for nitrogen oxides and VOC emissions with each application for a permit to operate. RACT must be implemented on these emission points when operation commences. A RACT analysis is not required for new emission points with NO<sub>x</sub> and VOC emission rate potentials less than 3.0 pounds per hour and actual emissions in the absence of control equipment less than 15.0 pounds per day at facilities located outside of the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury and New York City metropolitan area.

#### SUBPART 212-4

#### CONTROL OF NITROGEN OXIDES FOR HOT MIX ASPHALT PRODUCTION PLANTS

##### Section 212-4.1 Control of nitrogen oxides for hot mix asphalt production plants

(a) The owner or operator of a hot mix asphalt production plant must comply with the following requirements:

(1) Beginning in calendar year 2011, a tune-up must be performed on the dryer burner on an annual basis at any hot mix asphalt production plant that is in operation during that calendar year.

(2) A plan must be submitted to the department by March 1, 2011 that details the introduction or continuation of methods by which to reduce the moisture content of the aggregate stockpile(s). Such methods must be implemented that year, or the first subsequent year the plant is in operation.

(b)(1) Beginning January 1, 2012, the owner or operator of a hot mix asphalt production plant must analyze the economic feasibility of installing a low NO<sub>x</sub> burner when it comes time for the current burner to be replaced. This economic analysis must follow an approach acceptable to the department.

(2) By January 1, 2020, all owners or operators of active plants must have submitted the economic feasibility analysis for the installation of a low NO<sub>x</sub> burner. A low NO<sub>x</sub> burner must be installed for that operating year in all instances in which it proves feasible.

(3) Hot mix asphalt production plants that are in a state of inactivity on January 1, 2020 and have not otherwise complied with the requirements of this subdivision by that date must do so prior to continued operation.

(4) A similar analysis must be submitted for subsequent burner replacements.

(5) A low NO<sub>x</sub> burner is required at any new hot mix asphalt production plant.

(c) For major stationary sources, approved RACT determinations will be submitted by the department to the EPA for approval as separate State Implementation Plan revisions.



# ENB - Statewide Notices 4/29/2020

## Notice of Proposed Rulemaking

**6 NYCRR Part 200, General Provisions  
6 NYCRR Part 201, Permits and Registrations  
6 NYCRR Part 212, Process Operations  
6 NYCRR Part 621, Uniform Procedures**

**Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 70-0109, 71-2103, and 71-2105 of the ECL, and Sections 501-507 (Title V) of the Clean Air Act (CAA or Act), the New York State Department of Environmental Conservation (NYS DEC) hereby gives notice of the following:**

NYS DEC is proposing revisions to its Operating Permitting Program (OPP). The OPP sets forth the regulatory requirements and procedures to allow owners and operators of an air contamination source to apply for and obtain a permit or registration from NYS DEC for the construction and operation of the source in New York. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by NYS DEC through Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this proposal will modify 6 NYCRR Section 212-2.2, Table 2 - High Toxicity Air Contaminant (HTAC) list, to make it consistent with Table 1 of Subpart 201-9. Finally, this proposal will make several minor changes to 6 NYCRR Part 212 to improve the clarity of its requirements. The scope of the existing Part 201 will not be changed as a result of this proposal.

Documents pertaining to this [proposed rulemaking](http://www.dec.ny.gov/regulations/propregulations.html#public) can be found on NYS DEC's website at <http://www.dec.ny.gov/regulations/propregulations.html#public>.

In light of the current emergency associated with the COVID-19 pandemic, Governor Cuomo has put New York State on PAUSE to limit the spread of the novel coronavirus. See Executive Order 202, including subsequent iterations and successors thereof, including Executive Order 202.15. Pursuant to these directives, non-essential meetings and gatherings of any size are currently prohibited, and rulemaking hearings are not required. Consistent with such requirements, NYS DEC will not hold a public hearing for this rulemaking.

**Requests for information and comments related to the SIP revision may be obtained from:** Robert D. Bielawa, NYS DEC - Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). **Written statements may be submitted until 5:00 p.m., June 29, 2020.**

**Request for information and comments related to the proposed revisions to Part 201 and Part 212, may be obtained from:** Mark LanzaFame, NYS DEC - Division of Air Resources, 625 Broadway, Albany NY 12233-3251, Phone: (518) 402-8403, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). **Written statements may be submitted until 5:00 p.m. June, 29, 2020.**





**Action taken:** Amendment of section 31 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 11-0303, 11-0903 and 11-0907

**Subject:** Black Bear hunting.

**Purpose:** Expand bear hunting opportunities in Wildlife Management Unit 4W to reduce bear abundance.

**Text or summary was published** in the July 3, 2019 issue of the Register, I.D. No. ENV-27-19-00003-P.

**Final rule as compared with last published rule:** No changes.

**Text of rule and any required statements and analyses may be obtained from:** Jeremy Hurst, Department of Environmental Conservation, 625 Broadway, Albany, NY 12233-4754, (518) 402-8883, email: jeremy.hurst@dec.ny.gov

**Revised Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement**

The original Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement as published in the Notice of Proposed Rule Making, remain valid and do not need to be amended.

#### Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

#### Assessment of Public Comment

The Department received about two dozen comments on the proposed amendment to include Wildlife Management Unit (WMU) 4W in the early bear hunting season. Several comments simply expressed support for the proposal without explanation or justification. For other comments, we reviewed the substance and merit of the comment and provide a summary and response here.

Comment:

Several writers noted their support for the proposal and indicated their perception that the bear population and associated human-bear conflicts have increased in WMU 4W in recent years.

Response:

The Department agrees that data from WMU 4W suggest that the bear population has increased, and current harvest levels are inadequate to achieve the desired management objective of maintaining a moderate density bear population. However, levels of human-bear conflict have not increased substantially.

Comment:

One writer expressed opposition to the proposal, indicating that the “no change” alternative be adopted and claiming that there is no scientifically-based biological data demonstrating need for the season expansion.

Response:

The Department disagrees. Annual bear harvest density provides a metric for monitoring bear population trends, and harvest records in WMU 4W demonstrate that current harvest levels are inadequate to achieve the management objective of maintaining a moderate density population.

Comment:

One writer asked whether it would be possible to assist other states with renewing their bear populations, presumably suggesting that bears from WMU 4W be captured and released in other jurisdictions.

Response:

All states in eastern North America report stable or increasing bear populations. In the few states where bears are rare or largely absent (e.g., Rhode Island, Delaware), their management objectives do not call for population augmentation through bear relocation and release.

Comment:

One writer requested that all bear hunting be stopped.

Response:

The Department believes discontinuing bear hunting would be an unwise and irresponsible action, constituting a failure to uphold our public trust management responsibilities. Regulated black bear hunting is an important method of managing bear populations, allowing hunters to sustainably utilize the excess production of the bear population. Hunting provides additional benefit through the annual removal of some habituated bears which cause conflicts with humans and damage to agricultural crops or livestock production.

Comment:

One writer expressed the opinion that an early season in 4W is not warranted at this time, believing that the bear harvests observed statewide over the past 6 years represent a significant increase in harvest rate compared to the prior 20 years, and suggesting that this should be keeping the population from increasing. This writer also suggested that additional hunting related changes should not be made until the iSeeMammals Citizen Science project is fully implemented and providing greater insight about the bear population.

Response:

We appreciate the writer’s concern, but it is inappropriate to ascribe statewide harvest trends to population analysis and management decisions of an individual WMU. Too, while iSeeMammals shows promise as a tool to collect information about bear presence and absence from participating citizen scientists for use in an integrated population modeling context, presently the iSeeMammals project does not have the intensity of use necessary for WMU level analysis. Existing metrics of bear abundance in 4W indicate that bear harvests are inadequate to achieve the management objective of maintaining a moderate density population.

Comment:

Several writers suggested additional modifications of bear hunting regulations to increase bear harvest, as intended with this rule change, including: allowing hunters to use bait to attract bears, creation of a spring bear hunting season, and expansion of the early bear hunting season into additional WMUs. Additionally, although this rule making did not propose anything beyond additional hunting opportunity in WMU 4W, one writer commented in opposition to potential alternative, non-proposed, bear hunting techniques (e.g., use of bait or dogs, cable restraints, spring seasons).

Response:

The use of bait or dogs to hunt black bears, while highly successful techniques to increase harvest rates of bears, are prohibited by New York State Law and thereby outside the Department’s current ability to implement. While both the establishment of a spring bear hunting season and further expansion of early bear season opportunities are within the Department’s purview, neither is necessary for population management at this time.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### The Department’s Air Pollution Control Permitting Program

I.D. No. ENV-17-20-00005-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of Parts 200, 201, 212 and 621 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 70-0109, 71-2103, 71-2105; Clean Air Act (CAA or Act), sections 501-507 (title V)

**Subject:** The Department’s air pollution control permitting program.

**Purpose:** The purpose of this rulemaking is to improve the clarity and consistency of the Department’s air pollution permitting program.

**Substance of proposed rule (Full text is posted at the following State website:** <http://www.dec.ny.gov/regulations/proproregulations.html> **#public):** The New York State Department of Environmental Conservation (Department) is proposing to revise its Operating Permit Program as set forth in Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; 212, Process Operations; and 621, Uniform Procedures (collectively, Part 201).

The proposed revisions to Part 200 revise the definition of ‘emergency power generating stationary internal combustion engine’ to allow operation for more than 500 hours during a declared state disaster emergency as defined under Section 28 of the New York State Executive Law. It also modifies the definition of ‘combustion installation’ and adds the definitions of ‘fossil fuel’ and ‘furnace’, which are being removed from Paragraph 201-2.1(b).

The proposed revisions to Part 621 correct minor language inconsistencies in Subdivision 621.4(g). The renewal application deadlines specified in Paragraph 621.11(a)(1) are being revised to be consistent with Part 201. Finally, the language of Subdivision 621.11(i) is being revised to be consistent with Part 201.

Subdivision 621.4(g) is revised to remove an outdated reference to 6 NYCRR Part 215. Subparagraph 621.4(g)(2)(ii) is revised to refer to air state facility permits and correct a reference to Part 201. Clauses 621.4(g)(2)(v)(‘a’) and 621.4(g)(2)(v)(‘b’) are deleted. Paragraph 621.11(a)(1) is revised to clarify the renewal application deadlines for air state facility, Title V facility, and Title IV facility permits. Subdivision 621.11(i) is revised to clarify the public noticing requirements for air permits containing emission caps.

Subdivision 212-1.4(a) is revised to clarify its requirements. Subdivision 212-1.4(k) is revised to address toxic emissions from the iron and steel industry. Paragraph 212-1-5(e)(2) is revised to include an alternative toxic impact assessment method. Table 2 in Section 212-2.2 is revised to

be consistent with Table 1 in Subpart 201-9 and to reflect the latest toxicological information. Table 6 in Subdivision 212-2.5(b) is revised to show permissible emission rates consistent with the formula presented in that Subdivision.

Subdivision 201-1.2(b) is revised and reworded to more clearly state its requirements. Sections 201-1.4, 201-1.5, 201-1.11, 201-1.12, and 201-1.13 are revised to more clearly state their requirements. Finally, a new Section 201-1.16 is added to specify certain criteria that owners or operators of research and development activities must meet to qualify for exemption from permitting requirements.

The definition of 'emergency' in Paragraph 201-2.1(b)(12) is revised to more clearly indicate situations that qualify as an emergency under Part 201. Paragraphs 201-2.1(b)(16) and 201-2.1(b)(17) are repealed and reserved. An extraneous sentence is removed from Paragraph 201-2.1(b)(20) to clarify its meaning. References to greenhouse gas emissions are removed from Paragraph 201-2.1(b)(21). Paragraph 201-2.1(b)(22) is revised to more clearly indicate situations that qualify as a malfunction under Part 201. Paragraph 201-2.1(b)(23) is repealed and reserved. Paragraph 201-2.1(b)(24) is revised to indicate that portable emission sources that remain at the same facility for 12 consecutive months will be treated as stationary emission sources. Paragraph 201-2.1(b)(26) is revised to include registrations. Paragraph 201-2.1(b)(29) is revised to more clearly indicate what qualifies as a temporary emission source. Finally, Paragraphs 201-2.1(b)(30), 201-2.1(b)(31), and 201-2.1(b)(32) are repealed.

Section 201-3.1 is revised to clarify its requirements and intent. Paragraph 201-3.2(c)(1) is revised to clarify the specific types of combustion installations that qualify for exemption. Paragraph 201-3.2(c)(6) is revised to remove engine test cells from the exempt activity. Paragraph 201-3.2(c)(13) is revised to clarify the emissions threshold for exempt graphic arts facilities. Paragraph 201-3.2(c)(21) is revised to remove liquid asphalt storage tanks from the exempt activity and add biodiesel storage tanks. Paragraph 201-3.2(c)(25) is revised to add liquid asphalt storage tanks to the exempt activity. Paragraph 201-3.2(c)(29) is revised to clarify which types of crushing operations qualify for exemption. Paragraph 201-3.2(c)(36) is revised to exclude plastic extrusion processes using halogenated polymers from the exempt activity. Paragraph 201-3.2(c)(40) is revised to clarify that laboratory operations producing commercial quantities of materials are not considered to be exempt. Paragraph 201-3.2(c)(44) is repealed and reserved. Paragraph 201-3.2(c)(46) is revised to include natural gas and methane fuel cells as an exempt activity. A new Paragraph 201-3.2(c)(49) is added to list covered manure storage exhausting to a flare or other appropriate control device as an exempt activity. A new Paragraph 201-3.2(c)(50) is added to list coffee roasting processes with a maximum operating capacity of less than 25 tons per year of green coffee beans as exempt activities. A new Paragraph 201-3.2(c)(51) is added to list process emission sources at breweries with total beer and malt liquor production less than 60,000 barrels per year as exempt activities. A new Paragraph 201-3.2(c)(52) is added to list process emission sources at wineries with total wine and brandy production less than 700,000 gallons per year as exempt activities. A new Paragraph 201-3.2(c)(53) is added to list process emission sources at distilleries with less than 10,000 distiller's bushels of grain input per year as exempt activities. A new Paragraph 201-3.2(c)(54) is added to list process emission sources at lumber drying kilns with an annual throughput of untreated wood less than 275,000 board feet as exempt activities.

Paragraph 201-3.3(c)(8) is revised to include nail salons as a trivial activity. Paragraph 201-3.3(c)(28) is repealed and replaced with an activity that applies to sub-slab depressurization systems. Paragraph 201-3.3(c)(29) is revised to clarify its intent. Paragraph 201-3.3(c)(30) is revised to clarify its intent. Paragraph 201-3.3(c)(41) is revised to remove tub grinders and construction and demolition waste crushers from the trivial activity. It is also revised to specifically exclude construction and demolition waste crushers and automotive and scrap metal shredding operations from the trivial activity. Paragraph 201-3.3(c)(63) is revised to more clearly indicate that the trivial activity does not apply to surface coating operations at woodworking facilities. Existing Paragraph 201-3.3(c)(84) is repealed and replaced with new language indicating that laser and plasma cutters and trimmers using appropriate emission control devices that do not emit hazardous air pollutants are considered trivial activities. Paragraph 201-3.3(c)(85) is repealed and reserved.

Paragraph 201-4.1(a)(2) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. Further, Paragraph 201-4.1(a)(2) is revised to more clearly indicate that emissions of high toxicity air contaminants from combustion sources and exempt and trivial activities are not included in the facility wide total when determining air facility registration applicability. Subdivision 201-4.2(d) is revised to more clearly indicate that an air facility registration must be issued by the Department prior to the commencement of construction of a new or modified facility or emission source. Subdivision

201-4.2(f) is revised to indicate that the Department may withdraw or revoke air facility registrations in a manner that is consistent with the procedures set forth in 6 NYCRR Part 621. Paragraph 201-4.3(a)(1) is revised to more clearly state the identification information that must be provided with registration applications. Paragraph 201-4.3(a)(5) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. Subdivision 201-4.4(a) is repealed. Subdivision 201-4.4(b) is renumbered as Subdivision 201-4.4(a) and revised to include a permit transfer application as part of the material that must be submitted following a change in facility ownership. Subdivision 201-4.5(a) is repealed and replaced with a new Subdivision 201-4.5(a) that more clearly states the purpose and applicability of cap-by-rule. Paragraph 201-4.5(j)(1) is renumbered as Subdivision 201-4.5(k).

Paragraph 201-5.1(a)(3) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. Further, Paragraph 201-5.1(a)(3) is revised to more clearly indicate that emissions of high toxicity air contaminants from combustion sources and exempt and trivial activities are not included in the facility wide total when determining state facility permit applicability. Existing Subdivision 201-5.1(b) is revised to more clearly state that construction or modification may not commence until a state facility permit is issued by the Department. Paragraph 201-5.2(b)(8) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. A new Subdivision 201-5.2(d) is added to state that renewal applications for state facility permits containing emissions caps are subject to public noticing requirements as described in 6 NYCRR Part 621. Subdivision 201-5.3(b) is revised to clarify which state facility permits are subject to recall as described in the Subdivision. Existing Section 201-5.4 is repealed and replaced with a new Section 201-5.4 that changes the modification procedures for state facility permits. The new Section 201-5.4 differentiates between significant and minor state facility permit modifications and establishes the necessary procedures for their review and issuance. Section 201-5.4 also describes appropriate procedures for certain changes at facilities holding a state facility permit that may be made without a permit modification in certain situations and following appropriate advance notification procedures. Finally, Section 201-5.4 allows the Department to require a permit modification for changes that would otherwise be subject to the advance notification provisions if an adverse environmental impact exists.

Subdivision 201-6.1(a) is revised to more clearly indicate that the described facilities may not be constructed or operated without first obtaining a Title V permit. Paragraph 201-6.2(a)(2) is revised to require the submission of a complete application prior to the commencement of construction of new or modified emission units that would make an existing facility subject to Title V permitting requirements. Paragraph 201-6.2(a)(2) is further revised to require the submission of a Title V permit application within one year of the commencement of operation of the new or modified emission units if the facility was issued an air state facility permit to construct. Subparagraph 201-6.2(d)(3)(i) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. Subparagraph 201-6.4(c)(3)(i) is revised to require that electronic monitoring reports be submitted in a format acceptable to the Department. Existing Subdivision 201-6.4(f) is repealed and replaced with a new Subdivision 201-6.4(f) that more clearly describes operational flexibility requirements for Title V permits. The new Subdivision 201-6.4(f) outlines the procedures facility owners and operators must follow to establish alternate operating scenarios and operational flexibility protocols should they choose to do so. Subdivision 201-6.5(c) is revised to reference the emergency defense provisions of Section 201-1.5 as they are better described at that Section.

Subdivision 201-7.1(c) is revised to more clearly describe the information that must be included in applications proposing one or more emissions caps.

Existing Subpart 201-9 is repealed and replaced to be consistent with Table 2 in 6 NYCRR Part 212-2.2.

A new Subpart 201-10 is added to include a severability clause for Part 201.

**Text of proposed rule and any required statements and analyses may be obtained from:** Mark Lanzafame, P. E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: air.regs@dec.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** June 29, 2020.

**Additional matter required by statute:** Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form and a Coastal Assessment Form have been prepared and are on file.

**Summary of Regulatory Impact Statement (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/propregulations.html#public>):**

The New York State Department of Environmental Conservation (Department) is proposing revisions to its Operating Permitting Program



(OPP). The OPP sets forth the regulatory requirements and procedures for owners and operators of air contamination sources applying for and obtaining a permit or registration from the Department for the construction and operation of the source. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by the Department through Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this proposal will modify 6 NYCRR Section 212-2.2, Table 2 – High Toxicity Air Contaminant (HTAC) list, to be consistent with Table 1 of Subpart 201-9. Finally, this proposal will also make minor changes to 6 NYCRR Part 212 to improve the clarity of its requirements.

#### 1. STATUTORY AUTHORITY

The statutory authority for these regulations is found in Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 70-0109, 71-2103, and 71-2105 of the ECL, and Sections 501-507 (Title V) of the Clean Air Act (CAA or Act).

#### 2. LEGISLATIVE OBJECTIVES

The CAA Amendments of 1990 established federal standards for state OPPs in order to fulfill the Act's environmental protection goals. Title V established standard requirements for state OPPs to ensure that major sources of air pollution complied with the requirements of the Act, along with any federal standards promulgated by EPA (Environmental Protection Agency) to protect air quality. Title V requires states to establish a permit program implementing the requirements of the Act and requires EPA to review and approve the program. The OPP must address both large and small sources of air pollution and provide a basis for implementing and enforcing federal and state regulations.

Articles 1 and 3 of the ECL define the legislative policy objective of reducing air pollution and providing clean air for the citizens of New York and provide authority for the Department to adopt and enforce regulations to accomplish these objectives. Additionally, Article 19 of the ECL was enacted to safeguard the air quality of the state from pollution, ensure the protection of public health and the welfare of the people of the State and, to that end, require the use of all available practical and reasonable methods to prevent and control air pollution in the State. In furtherance of these objectives, ECL Article 19 grants specific powers and duties to the Department, including the authority to promulgate regulations requiring sources of air pollution to obtain permits and registrations from the Department and the authority to control and abate new and existing sources of air pollution.

#### 3. NEEDS AND BENEFITS

##### Need for Revisions to the OPP

On February 22, 2013, the Department adopted revisions to Part 201 which updated its requirements, improved its clarity and consistency, and made the air permitting process easier to implement. Despite the overall success of this rulemaking, the Department identified items that need additional clarification. The Department has received feedback from the regulated community regarding ways to improve implementation of Part 201. Accordingly, the Department is proposing to amend Parts 200, 201, 212, and 621 to ensure that the OPP is as efficient and up to date as possible, and that it is implemented consistently across the state.

##### Benefits of Air Permitting Program Revisions

Adopting the proposed revisions will allow the Department to further streamline the air permitting process and provide clarity to the requirements. As a result, the OPP will become more efficient and easier to implement, thus reducing the compliance burden on both the Department and regulated facilities. In addition, this proposal will allow the Department to better fulfill its mandate to protect the citizens and environment of the state by updating the list of HTACs to be consistent with the most recent toxicological data.

##### Proposed Amendments to Part 200

The Department is proposing to amend Part 200.1(cq) by revising the definition of 'emergency power generating stationary internal combustion engine' to allow emergency engines to operate more than 500 hours per year during a declared state of emergency. The Department did not intend to prohibit the operation of these engines during such an emergency. The Department is also proposing to amend Part 200.1(l) by revising the definition of 'combustion installation' to add "other solid, liquid, and gaseous fuels" to those listed. The Department is also proposing to relocate the definitions of the terms 'fossil fuel' and 'furnace' from Subpart 201-2 to Part 200.1.

##### Proposed Amendments to Part 621

Subdivision 621.4(g) will be revised to provide clarity and conform these provisions with the requirements of Part 201. Specifically, the proposed revisions will correct several minor inconsistencies in regulatory citations and language making it easier to understand and implement.

In addition, the proposal will correct an inconsistency with the renewal provisions for air state facility permits. Existing Paragraph 621.11(a)(1) states that renewal applications for non-major (i.e. state facility) air permits are due no later than 30 days prior to the expiration date of the permit. This is inconsistent with Subdivision 201-5.2(c), which states that renewal applications for state facility permits must be submitted no later than 180 days prior to the expiration date of the permit. It is the Department's intent that renewal applications for state facility permits be submitted as described in Subdivision 201-5.2(c).

##### Proposed Amendments to Part 201

Minor language revisions throughout Part 201 are being proposed. Further, the definitions of 'permit shield', 'Title V facility permit', 'Title V facility permit modification', and 'Title V facility permit revision' are being removed as those terms are more clearly described elsewhere within Part 201.

The proposal will add a new Section 201-1.16 addressing research and development (R&D) activities. These activities are currently exempt from permitting in situations where products are not being produced for commercial sale. An increase in R&D activities being conducted throughout the State necessitates a more thorough review of these activities and their emissions.

Several exempt and trivial activities will be updated to make it easier to determine whether an emission source qualifies for exemption. The Department is proposing a new exempt activity that applies to wood and lumber drying kilns processing 275,000 board feet or less of untreated wood on an annual basis. The Department is also proposing a new exempt activity that applies to coffee roasting processes with a maximum operating capacity of 3 kilograms or less per batch and 25 tons or less per year of green coffee beans. The proposed revisions also include three new exempt activities for certain small beverage alcohol production facilities. Finally, a new exemption for covered manure storage exhausting to a flare is proposed.

The proposed revisions to Section 201-3.2 will reduce the maximum size for exempt liquid asphalt storage tanks from 300,000 barrels (12,600,000 gallons) to 10,000 gallons and add biodiesel storage tanks to the exempt activity.

Finally, the Department is proposing to revise a trivial activity that applies to certain solid waste handling operations. This activity was revised during the February 2013 revisions to Part 201 to include tub grinders and construction and demolition waste crushers. It has become clear that both activities can be a significant source of nuisance dust and are therefore not appropriately classified as trivial activities.

Subdivision 201-4.5(a) will be clarified. The Department does not intend to prevent facility owners or operators from registering because they cannot cap-by-rule to avoid a state VOC RACT regulation. Such a facility could cap-by-rule in order to avoid major facility status while still complying with VOC RACT requirements.

Section 201-5.2 will be amended to state that state facility permits containing emissions caps must be publicly noticed when they are renewed or modified.

The modification procedures for state facility permits will be restructured. These new provisions mirror the modification provisions for Title V facility permits by addressing significant and minor modifications, allowing the Department to act more quickly on certain modification applications. Proposed Section 201-5.4 also includes provisions for changes that can be made at permitted facilities without a permit modification.

Subdivision 201-6.4(f) outlines the procedures for implementing operational flexibility at Title V facilities. This section will be revised to clarify its intent and simplify implementation.

The group of compounds listed as persistent, bioaccumulative and toxic compounds will be renamed as HTACs in order to be consistent with Part 212. This change does not affect the requirements for calculating HTAC emissions when determining what type of permit is required for a facility. Additionally, the Department has re-evaluated the list of HTACs based on the latest available data, resulting in several changes to the listed compounds.

##### Proposed Amendments to Part 212

The Department is proposing to update Table 2 – HTAC list, in Section 212-2.2 to be consistent with Table 1 in Subpart 201-9.

Subdivision 212-1.4(k) will be revised to address mercury and other toxic emissions from the iron and steel industry.

Paragraph 212-1.5(e) will be revised to simplify the toxic impact assessment requirements in certain situations.

#### 4. COSTS

The Department does not anticipate any increase in costs to the regulated community as a result of this rulemaking. Affected facilities are already required to pay applicable fees, monitor operations, and operate pollution control equipment. Further, many of these facilities already employ the necessary staff required to complete these tasks. Any increase

in costs to the regulated community due to the HTAC list changes is expected to be minimal.

An informal survey of facility owners and operators conducted in 1996 by the New York State Environmental Facilities Corporation (EFC) determined the average cost of applying for a minor facility permit in two different regions of the state: downstate and upstate. When updated to 2017 dollars, the costs for state facility permit and registration applications in the downstate region ranged from \$1,600 to \$7,700 per emission point. In the upstate region, these costs are estimated at \$1,900 to \$4,300. Some facilities may choose to hire a consulting firm to assist with this process. The Department estimates that the cost of hiring a consulting firm is approximately \$6,000.

#### 5. PAPERWORK

The proposed changes are not expected to increase the amount of paperwork required from affected facilities.

#### 6. LOCAL GOVERNMENT MANDATES

The proposed revisions do not create any local government mandates and are not expected to result in any additional burdens to State or local governments.

#### 7. DUPLICATION

The proposal does not duplicate any state or federal regulations or statutes. The final rule will conform to the requirements of the Act and the ECL.

#### 8. ALTERNATIVES

The only alternative to this proposal is to take no action, which will have several negative consequences. Confusing language will remain in the regulations, resulting in inconsistent implementation and a lengthier permitting process. The mass emission thresholds for HTACs will remain inconsistent with the current assessment of their relative risk, potentially requiring the owner or operator of a facility emitting these compounds to unnecessarily obtain a state facility permit at a greater cost.

#### 9. FEDERAL STANDARDS

The proposed revisions to Part 201 are consistent with federal standards and fulfill the Department's obligations under the Act.

The proposed revisions to Part 212 use federal NESHAP standards as a floor and build upon them to ensure that all air toxic emissions are appropriately regulated.

#### 10. COMPLIANCE SCHEDULE

The proposed revisions do not result in the establishment of any compliance schedules. The regulation will take effect 30 days after publication in the State Register.

### **Regulatory Flexibility Analysis**

The New York State Department of Environmental Conservation (Department) is proposing several revisions to its Operating Permitting Program (OPP). The OPP sets forth the regulatory requirements and procedures to allow owners and operators of an air contamination source to apply for and obtain a permit or registration from the Department for the construction and operation of such sources. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by the Department through Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this proposal will modify 6 NYCRR Section 212-2.2, Table 2 – High Toxicity Air Contaminant (HTAC) list, to make it consistent with Table 1 of Subpart 201-9. Finally, this proposal will also make several minor changes to 6 NYCRR Part 212 to clarify its requirements.

#### 1. EFFECT OF RULE

The proposed revisions to Part 201 are not expected to adversely affect small businesses and local governments. The owner or operator of an air emission source is required to obtain and comply with a permit or registration for that source. Small businesses and local governments are currently required to comply with this requirement under the existing Part 201. The proposed revisions will make the terms and conditions of Part 201 easier to understand and implement, simplifying the compliance process.

#### 2. COMPLIANCE REQUIREMENTS

Small businesses and local governments that own or operate a non-exempt stationary emission source are currently required to complete and file an appropriate permit or registration application for the construction and operation of that facility. Once a permit or registration is issued, the facility owner or operator is required to comply with all terms and conditions of that permit or registration, and ensure that it accurately reflects facility operations. This requirement will not change as a result of these proposed revisions.

#### 3. PROFESSIONAL SERVICES

Small businesses and local governments are able to comply with the requirements of Part 201 without contracting with any professional

services. In some cases, however, small businesses and local governments may choose to hire a private consulting firm to assist them with meeting their obligations under Part 201. The decision to employ a consulting firm is voluntary, and any associated costs are incurred at the discretion of the affected facility.

#### 4. COMPLIANCE COSTS

Compliance costs for small businesses and local governments are not expected to increase as a result of the proposed revisions. A more detailed analysis of the costs associated with this rulemaking is presented in the Regulatory Impact Statement.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The proposed revisions to Part 201 do not contain any additional technological requirements for affected facilities. Also, the Department does not expect a significant change in the economic feasibility of Part 201 as a result of these revisions. Affected facilities are currently required to obtain permits and registrations from the Department. Several thousand facilities of various sizes are currently operating in compliance with Part 201 throughout the State. This is expected to continue after these proposed revisions are promulgated.

#### 6. MINIMIZING ADVERSE IMPACT

The proposed revisions to Part 201 are not expected to have an adverse impact on small businesses and local governments. New and existing facilities are already required to comply with the current version of Part 201, and the scope of the regulation is not changing as a result of the proposed revisions. These proposed revisions are intended to simplify the permitting process by making it easier to understand and more efficient.

To assist small businesses with environmental compliance, the Department provides free and confidential support through the Small Business Environmental Assistance Program (SBEAP), administered by the New York State Environmental Facilities Corporation. Interested facility owners and operators can contact SBEAP staff for free and confidential assistance filing permit and registration applications, as well as for advice and strategies for maintaining compliance with environmental regulations. This program provides small businesses with a cost saving option while ensuring that they are in compliance with the requirements of Part 201.

The proposed revisions will also add an alternative compliance option for facilities required to develop a Toxic Impact Assessment (TIA) pursuant to Paragraph 212-1.5(e)(2). This alternative compliance option would allow the facility owner or operator to demonstrate compliance with Part 212 by showing that the facility's emissions are below the applicable HTAC thresholds rather than by completing an air dispersion modeling analysis and TIA. As a result, the facility owner or operator would avoid the potentially high cost of performing the air dispersion modeling.

#### 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

As stated above, small businesses and local governments are not expected to be directly affected by the proposed revisions to Part 201. The Department conducted stakeholder outreach to all facilities potentially affected by this proposal, including national and local associations and manufacturers, and have given stakeholders several opportunities to participate in the development of the proposed rule. Potentially affected entities, including those involved in small businesses and local governments, will have the opportunity to review and comment on the draft rulemaking in accordance with State rulemaking requirements, and all comments will be considered during the development of the proposed requirements.

#### 8. CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in this rulemaking. This proposal will not result in immediate violations or impositions of penalties for existing facilities.

#### 9. INITIAL REVIEW

The initial review of these rules shall occur no later than the third calendar year after the year in which it is adopted.

### **Rural Area Flexibility Analysis**

The New York State Department of Environmental Conservation (Department) is proposing several minor revisions to its Operating Permitting Program (OPP). The OPP sets forth the regulatory requirements and procedures to allow owners and operators of an air contamination source to apply for and obtain a permit or registration from the Department for the construction and operation of such sources. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by the Department through Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this proposal will modify 6 NYCRR Section 212-2.2, Table 2 – High Toxicity Air Contaminant (HTAC) list, to make it consistent with Table 1 of Subpart 201-9. Finally, this proposal will also make several minor changes to 6 NYCRR Part 212 to improve the clarity of its requirements.

### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

Part 201 applies to the owner or operator of any facility operating one or more stationary emission sources in New York State. Affected facilities range in scale from small industries with a handful of emission sources, to large scale industries with hundreds of emission sources. Affected facilities are located in communities throughout the state, including rural areas. The owner or operator of such a facility is already required to comply with the permitting and registration provisions of the existing Part 201. This proposal seeks to modify and update those provisions in order to make them easier to understand and implement. These changes are expected to result in increased efficiency at regulated facilities, potentially decreasing compliance costs. Accordingly, no adverse impacts on rural areas are anticipated due to this rulemaking.

### 2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

Facility owners and operators that are subject to the requirements of Part 201 are required to obtain a facility permit or registration from the Department based on the facility's potential to emit. Once issued, the permit or registration contains terms and conditions that the facility owner or operator is required to adhere to in order to demonstrate continuous compliance with state and federal rules and regulations that apply to the operation of that facility. Part 201 applies to all facilities operating stationary emission sources, regardless of their location. The proposed revisions will increase the clarity and efficiency of the rule, making compliance easier and more efficient for facility owners and operators.

Owners and operators of facilities subject to Part 201 may choose to hire a private consulting firm to assist them with meeting their obligations under Part 201. The decision to employ a consulting firm is voluntary, and any associated costs are incurred at the discretion of the affected facility.

### 3. COSTS

A detailed analysis of the costs for complying with the requirements of Part 201 can be found in the Regulatory Impact Statement for this rulemaking and is incorporated here. The annualized compliance costs and application preparation costs described in that analysis are expected to be comparable to those of affected facilities located in rural areas. The proposed revisions to Part 201 will increase the clarity and efficiency of the air permitting program, potentially leading to cost savings over the current regulation.

### 4. MINIMIZING ADVERSE IMPACT

The Department does not anticipate any adverse impacts to rural areas as a result of this proposal. Permitting sources of air pollution regardless of ownership or location is necessary to ensure that they are operated in a way that protects the public health and the environment. In addition, the proposed revisions to Part 201 will make it easier for facility owners and operators to understand and comply with its requirements.

The proposed revisions will add a new exempt activity for covered manure storage systems equipped with fumes. These systems are becoming increasingly prevalent at farms statewide as part of an effort to reduce methane emissions from their operations. As an exempt activity, such a system would not be required to obtain an air facility registration or air pollution control permit, making it easier for interested farms to purchase and install such a system. Additionally, this proposed exemption will eliminate any air pollution control permitting costs associated with a cover and fume system.

The proposed revisions will also add an alternative compliance option for facilities required to develop a Toxic Impact Assessment (TIA) pursuant to Paragraph 212-1.5(e)(2). This alternative compliance option would allow the facility owner or operator to demonstrate compliance with Part 212 by showing that the facility's emissions are below the applicable HTAC thresholds rather than by completing an air dispersion modeling analysis and TIA. As a result, the facility owner or operator would avoid the potentially high cost of performing the air dispersion modeling.

### 5. RURAL AREA PARTICIPATION

The Department conducted stakeholder outreach to all facilities potentially affected by this proposal, including those that are located in rural areas. Potentially affected entities, including those located in rural areas of the state, will have the opportunity to review and comment on the draft rulemaking in accordance with State rulemaking requirements, and all comments will be considered during the development of the proposed requirements.

### Job Impact Statement

The New York State Department of Environmental Conservation (Department) is proposing several revisions to its Operating Permitting Program (OPP). The OPP sets forth the regulatory requirements and procedures to allow owners and operators of an air contamination source to apply for and obtain a permit or registration from the Department for the construction and operation of such sources. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by the Department through Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR)

Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this proposal will modify 6 NYCRR Section 212-2.2, Table 2 – High Toxicity Air Contaminant (HTAC) list, to make it consistent with Table 1 of Subpart 201-9. Finally, this proposal will also make several minor changes to 6 NYCRR Part 212 to improve the clarity of its requirements.

### 1. NATURE OF IMPACT

The proposed revisions to Part 201 are not expected to have any measurable impacts on jobs or employment opportunities in the state. Affected facilities are already required to comply with the OPP, and currently do so with existing staff or by contracting with outside consulting firms. The proposed revisions will make the terms and conditions of Part 201 easier to understand and implement, simplifying the compliance process and allowing existing resources at affected facilities to be used more efficiently.

### 2. CATEGORIES AND NUMBERS AFFECTED

Facility owners and operators affected by Part 201 may choose to hire professional engineering staff to assist with the completion of permit applications, and ensure their facility meets its obligations under their permit. Most facilities already employ the necessary staff to meet these needs. Professional engineering consultants may be retained where dedicated staff is unavailable, but that decision will be made by the facility owner or operator. In addition, the proposed changes will increase the clarity and efficiency of the air permitting process, allowing technical staff and consultants to complete the necessary work more quickly and efficiently.

### 3. REGIONS OF ADVERSE IMPACT

The proposed revisions to Part 201 are not anticipated to have any adverse impacts on jobs or employment opportunities in the state. Accordingly, there are no regions of disproportionate or adverse impacts.

### 4. MINIMIZING ADVERSE IMPACT

The proposed revisions to Part 201 are not anticipated to have any adverse impacts on jobs or employment opportunities in the state. Facilities are already required to comply with the current version of Part 201, and the scope of the regulation is not changing as a result of the proposed revisions. These proposed revisions are intended to simplify the permitting process by making it easier to understand and more efficient.

## PROPOSED RULE MAKING NO HEARING(S) SCHEDULED

### Emission Statements

**I.D. No.** ENV-17-20-00006-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of Subpart 202-2 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105

**Subject:** Emission Statements.

**Purpose:** The purpose of this rule making is to require electronic submittal of annual emission statements beginning in 2022.

**Substance of proposed rule (Full text is posted at the following State website:** <http://www.dec.ny.gov/regulations/proproregulations.html>

**#public):** The purpose of 6 NYCRR Subpart 202-2 is to establish the requirements for annual emission statements filed by facilities subject to Title V permits. The New York State Department of Environmental Conservation (DEC) is proposing revisions to Subpart 202-2 to require electronic submittal of annual emission statements. This requirement will be phased in beginning with Title V permits issued in 2021. A summary of the revisions to Subpart 202-2 are presented in this document.

Proposed changes to Section 202-2.1, "Applicability:" A new subdivision 202-2.1(c) is proposed that mandates the electronic submittal of emission statements. The new requirement will be included as an enforceable condition in new or renewed Title V permits issued after January 1, 2021. Further, by reporting year 2025, all emission statements will be subject to the electronic submittal requirement.

Proposed changes to Section 202-2.3, "Required contents of an emission statement:" The first sentence of paragraph 202-2.3(a)(1) will be revised to read: "(A) responsible official must sign a form or other legal instrument provided by the department to certify the emission statement information" (proposed new text underlined). In addition, subparagraph 202-2.3(a)(3)(ix) will be modified to require that the sum of the percent operation by season reported in emission statements must equal 100. Further, subparagraph 202-2.3(a)(3)(xii) will be modified to state that report-





## Assessment of Public Comments

### 6 NYCRR Part 200, General Provisions

### 6 NYCRR Part 201, Permits and Registrations

### 6 NYCRR Part 212, Process Operations

### 6 NYCRR Part 621, Uniform Procedures

Comments received from April 29, 2020 through 5:00pm June 29, 2020

#### Section 200.1 Definitions

1. Comment: The proposed language of paragraphs 200.1(cy) and 200.1(cz) appears to replace the existing definitions of ‘stationary internal combustion engine’ and ‘stationary reciprocating internal combustion engine’ with ‘fossil fuel’ and ‘furnace’, respectively. Commenter 2

Response to Comment 1: This is not intentional and has been addressed. This rulemaking will add the proposed definitions of ‘fossil fuel’ and ‘furnace’ to the end of the definitions listed in Section 200.1.

No definitions in Section 200.1 are being removed.

#### Section 201-2.1 Definitions

2. Comment: The proposed language of paragraph 201-2.1(b)(22) defines ‘malfunction’ as “any sudden, infrequent, and not reasonably preventable failure of an air cleaning device or air contamination source to operate in compliance with all applicable Parts of this Title, not including failures that are caused entirely or partially by improper maintenance, careless operation, or other preventable conditions.”

Please provide clarification for the underlined portions of this proposed language. Commenter 2

Response to Comment 2: The owner or operator of an air contamination source and/or air cleaning device is generally required to operate and maintain that equipment in a manner that is consistent with good engineering practices, manufacturer's specifications, and all applicable requirements. However, equipment can fail unpredictably despite the best efforts of the owner or operator, causing or contributing to an exceedence of an emission standard or permit limit. In such situations, the owner or operator may wish to assert that a malfunction occurred when reporting the resulting noncompliance.

In general, failures that are reoccurring or due to negligent operation and maintenance of the equipment are not considered to be malfunctions. For example, if an engine fails because the operator neglected to change the crankcase oil at the maintenance interval specified by the manufacturer, it would not be considered a malfunction. Such a failure is 'reasonably preventable' because the engine would not have failed if the oil was changed at the proper intervals.

3. Comment: The proposed language of paragraph 201-2.1(b)(24) states that a portable emission source "shall be treated as a stationary emission source if it remains at the same facility for 12 consecutive months". Please clarify whether this applies to portable emission sources that are operated for 12 consecutive months or if it would apply to portable emission sources that are stored at a location for deployment to other facilities as needed. Commenter 2

Response to Comment 3: The proposed language of Paragraph 201-2.1(b)(24) considers whether the portable emission source was operated at the facility at any point during the previous 12 consecutive months. If the emission source was operated and it remained at the facility for 12 consecutive months, it



would be treated as a stationary source for permitting purposes. Emission sources that are not operated at the facility where they are stored would not become subject to permitting as stationary sources.

#### Research and Development Activities

4. Comment: Clarification is needed on the determination of appropriate control devices for research and development activities. Commenter 1

Response to Comment 4: In general, the Department determines that control equipment is appropriate for a given emission source on a case-by-case basis. This determination considers factors such as any applicable requirements, the process being controlled, the emissions resulting from that process, and the technical feasibility of control equipment for that process. These determinations have been integral to the application of various exempt and trivial activities for decades and are also critical for other regulatory programs such as the evaluation and control of process operations under Part 212. The proposed language of Paragraph 201-1.16(a)(2) does not change the Department's existing approach to these determinations.

5. Comment: Facilities that exceed the major source thresholds in Paragraph 201-2.1(b)(21) should not be subject to proposed Paragraph 201-1.16(a)(3) because emissions from research and development activities will not have any effect on regulatory applicability. Commenter 1

Response to Comment 5: As discussed in the Regulatory Impact Statement, the Department has determined that it is appropriate and necessary for facilities to quantify emissions from research and development activities. The commenter suggests that major facilities are already required to obtain a

Title V permit, and therefore that emissions exceeding the major facility threshold would have no net effect on the facility's permit. However, this does not consider other potentially applicable regulatory programs such as the control of High Toxicity Air Contaminants pursuant to Part 212. Further, certain applicable requirements (e.g. National Emission Standards for Hazardous Air Pollutants (NESHAP)) apply to major and/or area sources of hazardous air pollutants regardless of their exemption status from Part 201. Accordingly, it is possible that an operation otherwise conducted for research and development is subject to a federal NESHAP and would need to be included in the facility's permit.

#### Operational Flexibility

6. Comment: We support the proposed reduction to the operational flexibility notification period from 30 days to 15 days. Commenter 1

Response to Comment 6: The Department thanks you for your comment.

#### Air State Facility Permit Modifications

7. Comment: Permit changes such as the removal of equipment or changes in the method of operation that result in less stringent monitoring, record keeping, or reporting requirements should not qualify as significant modifications. Commenter 1

Response to Comment 7: The proposed language of Subparagraph 201-5.4(b)(1)(ii) is intended to apply to physical changes or changes in the method of operation that result in less stringent monitoring, record keeping, or reporting requirements. If an emission source will be permanently shut down, the Department would not view that change as significant in most cases. Similarly, a permanent change in

the method of operation for a given emission source such as permanently removing the capability to fire number 2 fuel oil from a dual fuel boiler would also not be considered significant.

The key to this concept is that the change is permanent, and the affected equipment will not be operated following the change. A change such as the removal of a control device where the previously controlled emission source will still be operated following the change would generally be considered significant. Similarly, changes in the method of operation of equipment that will still be operated following the change and that result in less stringent monitoring, record keeping, or reporting requirements would also generally be considered significant.

Department staff are available to discuss planned projects in advance of application submittal if the facility owner or operator is unsure whether a given change would be considered significant.

#### Malfunctions and Start-up/Shutdown Activities

8. Comment: It is unclear whether proposed subdivision 201-1.4(b) requires facilities to prepare a list of all theoretically possible maintenance and start-up/shutdown scenarios for each emission source in which an emission standard exceedence could potentially occur. If so, the creation of this list would be extremely burdensome and time consuming for large facilities. Commenter 1

Response to Comment 8: The proposed language of subdivision 201-1.4(b) requires the facility owner or operator to compile and maintain records of maintenance and start-up/shutdown activities only when they are expected to result in an exceedence of an applicable emission standard (i.e. when the maintenance or start-up/shutdown activity that is expected to result in the exceedence is imminent). The

facility owner or operator need not prepare a list of possible scenarios in advance to demonstrate compliance with this requirement.

#### Air Facility Registration Modifications

9. Comment: The Department should allow facilities proposing modifications to their air facility registration to proceed with the modification if the new registration is not received within 30 days of the Department's receipt of the modification application as is allowed by proposed 201-5.4(c)(3) for state facility permits and existing 201-6.6(c)(5) for Title V facility permits. Commenter 2

Response to Comment 9: The provisions of proposed paragraph 201-5.4(c)(3) and existing paragraph 201-6.6(c)(5) specifically apply to minor modifications to air state facility and Title V permits, respectively. The Department does not differentiate between minor and significant modifications for air facility registrations. Accordingly, a similar provision allowing the facility owner or operator to commence a minor modification at a registered facility 30 days after the Department's receipt of the application is not consistent with the modification provisions for registrations.

#### List of Commenters

1. Eastman Kodak Company
2. New York City Department of Environmental Protection

## OFFICE OF THE COMMISSIONER

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## STATE OF NEW YORK

### DEPARTMENT OF ENVIRONMENTAL CONSERVATION

#### CERTIFICATE OF ADOPTION

**AGENCY ACTION:** 6 NYCRR Parts 200, "General Provisions," 201, "Permits and Registrations," 212, "Process Operations," and 621, "Uniform Procedures."

Pursuant to the provisions of Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 70-0109, 71-2103, and 71-2105 of the ECL, and Sections 501-507 (Title V) of the Clean Air Act (CAA or Act). I, Basil Seggos, Commissioner of the Department of Environmental Conservation (DEC), hereby certify that the amendments to 6 NYCRR Parts 200, "General Provisions," 201, "Permits and Registrations," 212, "Process Operations," and 621, "Uniform Procedures" be adopted to read as on the attached original, and certify that this is the original thereof, as adopted by me on 1/20/21, to be effective 30 days after filing with the Department of State.

I further certify that prior notice, as required under the State Administrative Procedure Act, was published in the State Register on April 29, 2020 under Notice No. ENV-17-20-00005-P. I also further certify that due to the unprecedented nature of COVID-19, Governor Cuomo issued a PAUSE Order directing non-essential meetings/gatherings to be suspended or cancelled. See Executive Order 202 and subsequent additions, including Executive Order 202.15 which specifically addressed the suspending of public hearing requirements. Pursuant to these directives, the Department did not schedule or hold any public hearings for this proposed rulemaking.



Basil Seggos  
Commissioner  
Department of Environmental Conservation

DATED: 1/20/21

Albany, New York



Department of  
Environmental  
Conservation



Revised PART 201

PERMITS AND REGISTRATIONS

(Statutory Authority: Environmental Conservation Law Sections 1-0101, 3-0301, [3-0303,] 19-0103, 19-0105, [19-0107,] 19-0301, 19-0302, 19-0303, 19-0305, [19-0306, ]19-0311, 70-0109, 71-2103, [and] 71-2105[; 40 CFR part 70; United States Code, Section 7661(b); Federal Clean Air Act, Section 160-169, 171-193 (42 U.S.C. Sections 7470-7479; 7501-7515)] and Sections 501-507 of the Clean Air Act)

SUBPART 201-1

GENERAL PROVISIONS

Section 201-1.1 Purpose and applicability.

(a) ‘Purpose’. The purpose of this Part is to require owners and operators of air contamination sources to obtain a permit or registration from the department for the construction and operation of such sources.

(b) ‘Applicability’. This Part applies throughout New York State. Except as specifically described in Subpart 201-3 of this Part, owners and operators of air contamination sources must comply with this Part. Owners or operators of major stationary sources subject to Subpart 201-6 of this Part must obtain a title V facility permit. Owners or operators of other emission sources must either register, pursuant to Subpart 201-4 of this Part, or obtain a State facility permit pursuant to Subpart 201-5 of this Part. Owners or operators of emission sources subject to applicable requirements, or the requirement to obtain a title V facility permit, may request limitations on such source’s potential to emit regulated air pollutants in accordance with Subpart 201-4 or 201-7 of this Part, in order to avoid such applicable requirements. Subpart 201-8 of this Part provides for the issuance of general permits for stationary sources subject to this Part, except for affected sources under the Federal Acid Rain Program, unless otherwise provided in regulations promulgated under title IV of the act.

## Section 201-1.2 Unpermitted emission sources.

(a) Except as otherwise provided by this Part, construction or operation of a new, modified or existing air contamination source without a registration or permit issued pursuant to this Part is prohibited.

(b) If an existing facility or emission source was subject to the permitting requirements of this Part at the time of construction or modification, and the owner or operator failed to apply for a permit or registration [for such emission source] as described in this Part, the owner or operator must apply for a permit or registration in accordance with the provisions of this Part. The facility or emission source is subject to all regulations that were applicable to it at the time of construction or modification and any subsequent requirements applicable to existing emission sources. [then the following provisions apply:

(i) The owner or operator must apply for a permit for such emission source or register the facility in accordance with the provisions of this Part.

(ii) The emission source or facility is subject to all regulations that were applicable to it at the time of construction or modification and any subsequent requirements applicable to existing sources or facilities.]

## Section 201-1.3 Change in ownership.

A title V facility permit, State facility permit, general permit or registration is valid only for the emission unit(s), owner or operator, facility, mode of operation and permit conditions stated in the application, permit or registration. The owner or operator can transfer the permit or registration to a new owner or operator if the mode of operation and emissions do not change. Permit transfers are subject to the procedures established under Part 621 of this Title. The transfer of a registration is subject to the procedures set forth in section 201-4.4 of this Part.



Section 201-1.4 Malfunctions and start-up/shutdown activities.

(a) The facility owner or operator shall take all necessary and appropriate actions to prevent the emission of air pollutants that result in contravention of any applicable emission standard during periods of start-up, shutdown, or malfunction.

(b) The facility owner or operator shall compile and maintain records of all equipment [malfunctions,] maintenance[, or] and start-up/shutdown activities when they [can be] are expected to result in an exceedance of any applicable emission standard, and shall submit a report of such activities to the department when [requested to do so, or when so required by a condition of a permit issued for the corresponding air contamination source] required by a permit condition or upon request by the department. Such reports shall state whether [any violations] an exceedance occurred and[, if so, whether they were] if it was unavoidable, include the time, frequency and duration of the [maintenance and/or start-up/shutdown activities] exceedance, and an estimate of the emission rates of any air contaminants released. Such records shall be maintained for a period of at least five years and made available for review to department representatives upon request. Facility owners or operators subject to continuous [stack] monitoring and quarterly reporting requirements need not submit additional reports [for equipment maintenance or start-up/shutdown activities for the facility] of exceedances to the department.

(c) In the event that [emissions of air contaminants in excess of] air contaminant emissions exceed any applicable emission standard [in this Subchapter occur] due to a malfunction, the facility owner or operator shall [compile and maintain records of the malfunction and] notify the department as soon as possible during normal working hours, but not later than two working days after becoming aware that the malfunction occurred. In addition, the facility owner or operator shall compile and maintain a record of all malfunctions. Such records shall be maintained at the facility for a period of at least five years and must be made available to the

department upon request. When requested by the department, the facility owner or operator shall submit a written report to the department describing the malfunction, the corrective action taken, [identification of] the air contaminants emitted, and [an estimate of] the resulting estimated emission rates and/or opacity.

(d) The department may also require the facility owner or operator to include, in reports described under subdivisions (b) and (c) of this section, an estimate of the maximum ground level concentration of each air contaminant emitted and the effect of such emissions.

(e) A violation of any applicable emission standard resulting from start-up, shutdown, or malfunction conditions at a permitted or registered facility may not be subject to an enforcement action by the department and/or penalty if the department determines, in its sole discretion, that such a violation was unavoidable. The actions and recordkeeping and reporting requirements listed above must be adhered to in such circumstances.

#### Section 201-1.5 Emergency defense.

An emergency, as defined in Subpart 201-2 of this Part, constitutes an affirmative defense to penalties sought in an enforcement action brought by the department for noncompliance with emission limitations or permit conditions for all facilities in New York State.

(a) The affirmative defense of an emergency shall [be demonstrated] demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

(1) an emergency occurred and that the facility owner or operator can identify the cause(s) of the emergency;

(2) the equipment at the [permitted facility causing the emergency was at the time] facility was being

properly operated and maintained;

(3) during the period of the emergency the facility owner or operator took all reasonable steps to minimize the levels of emissions that exceeded the applicable emission standards, or other requirements in the permit; and

(4) the facility owner or operator notified the department within two working days after the event occurred. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and any corrective actions taken.

(b) In any enforcement proceeding, the facility owner or operator seeking to establish the occurrence of an emergency has the burden of proof.

(c) This provision is in addition to any emergency or [upset] malfunction provision contained in any applicable requirement.

#### Section 201-1.6 Public participation.

Local and Federal government, affected State and public participation in permit proceedings will be provided for in accordance with procedures established in Part 621[, Uniform Procedures,] of this Title unless otherwise provided for in this Part.

#### Section 201-1.7 Recycling and salvage.

Where practical, the owner or operator of an air contamination source shall recycle or salvage air contaminants collected in an air cleaning device according to the requirements of this Title.

Section 201-1.8 Prohibition of reintroduction of collected contaminants to the air.

No person shall unnecessarily remove, handle, or cause to be handled, collected air contaminants from an air cleaning device for recycling, salvage or disposal in a manner that would reintroduce them to the outdoor atmosphere.

Section 201-1.9 Delegation of program.

(a) The department may delegate permitting and/or enforcement of this Part and other Parts of this Title to a city or county. In order for the city or county to qualify for delegation, the department must:

(1) determine that the city or county has:

(i) enacted local laws, ordinances and regulations consistent with the relevant requirements of this Title; and

(ii) the staff resources and expertise necessary to implement the program to be delegated.

(2) obtain any approval necessary for such delegation from the administrator; and

(3) publish notice of the approved delegation in the *Environmental Notice Bulletin*. The delegation shall become effective 30 days following the date of publication.

(b) The department shall withdraw delegation when a city or county program no longer complies with the requirements of this section, and the city or county fails to take corrective action within 30 days of being so advised by the department.

(1) Such circumstances for the department to withdraw delegation include the following:

- (i) failure of the city or county to promulgate new laws, ordinances and regulations as necessary to be consistent with the relevant requirements of this Title;
- (ii) the city or county fails to exercise sufficient control over activities required to be regulated pursuant to the delegation, including failure to issue permits;
- (iii) repeated issuance of permits that do not comply with the relevant requirements of this Part;
- (iv) failure to comply with the public participation requirements of this Title;
- (v) failure to act on violations of permits or other delegated program requirements;
- (vi) failure to seek adequate enforcement penalties or to collect administrative fines when imposed; and
- (vii) failure to inspect and monitor activities subject to delegation.

(2) Notice of the department's withdrawal of delegation shall be printed in the 'Environmental Notice Bulletin' and the delegation will cease to be in effect 30 days following publication of such notice.

#### Section 201-1.10 Public access to recordkeeping.

(a) Where facility owners or operators keep records pursuant to compliance with requirements of this Part, the department will make such records available to the public upon request in accordance with Part 616 of this Title. Facility owners or operators must submit the records required to comply with the request within 60

working days of written notification by the department of receipt of the request.

(b) For facilities subject to Subpart 201-6 of this Part, the department will make available to the public any permit application, compliance plan, permit, and monitoring and compliance certification report pursuant to section 503(e) of the act, except for information entitled to confidential treatment pursuant to Part 616 of this Title or section 114(c) of the act.

#### Section 201-1.11 Temporary emission sources.

(a) The owner or operator of a facility operating a temporary emission source, as defined in Subpart 201-2 of this Part, is not required to obtain or modify a permit or registration for that source, as otherwise required by this Part, if the following conditions are met:

(1) the owner or operator of the temporary emission source notifies the department of the intent to operate a temporary emission source at least 10 days in advance of such operation;

(2) the emission source is operated in compliance with all applicable requirements[ and all Parts of this Chapter];

(3) the owner or operator of the facility where the temporary emission source is located maintains records on-site, for a period of at least five years, indicating the dates of operation of each temporary emission source;

(4) total emissions from the emission source do not exceed, or cause an existing permitted or registered facility to exceed, any of the following threshold levels:

(i) the major facility thresholds described in [section] Paragraph 201-2.1(b)(21) of this Part;

(ii) an emissions cap established pursuant to [Subpart] Subparts 201-4 or 201-7 of this Part; or

(iii) the significant project thresholds described in Part 231 of this Title at an existing major facility;  
and

(5) the temporary emission source is not an affected source, as defined in [section] paragraph 201-2.1(b)(3) of this Part.

(b) The department may require the owner or operator of a temporary emission source to obtain an air permit or registration for the location at which the source is operated if it determines that the emission source does not or cannot meet the requirements of this section or any other requirements of this Chapter.

Section 201-1.12 Suspension, reopening, [reissuance, modification or revocation] renewal, modification, revocation, and enforcement of air permits.

(a) The department may suspend, reopen, [reissue] renew, modify or revoke a permit in accordance with the procedures and provisions of Part 621 of this Title.

(b) [The owner or operator of any air contamination source or air cleaning device shall operate and maintain such source or device in compliance with all applicable requirements, permit conditions, and other Parts of this Title and existing laws.] Failure [of such person] to [properly] operate and maintain [the sources and/or devices] a permitted emission source or air cleaning device in compliance with all applicable requirements, permit conditions, other Parts of this Title and existing laws shall be grounds for an enforcement action and sufficient reason for the department to revoke or deny a permit or registration in accordance with the procedures and provisions of Part 621 of this Title.

#### Section 201-1.13 Access to regulated facilities.

Department representatives must be granted access, during normal operating hours, to any facility regulated by this Part, including facilities that are not required to obtain a permit or registration pursuant to Subpart 201-3 of this Part, for the purpose of determining compliance with this and any other State [and] or Federal air pollution [control requirements, regulations or laws] control requirement, regulation, or law.

#### Section 201-1.14 Certificates to operate

The owner or operator of an existing facility operating under a certificate to operate and/or permit to construct is required to apply to the department for a registration or permit, as described in this Part, within 90 days of receiving written notification [by] from the department.

#### Section 201-1.15 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. Up to an 18-month extension may be granted by the department upon a showing of good cause in a written request by the facility owner or operator. The department may suspend, modify or revoke the permit or registration pursuant to Part 621 of this Title if construction [or modification] has not commenced within 18 months of issuance of such permit or registration, or construction has been discontinued for a period of more than 18 months at any point after issuance of such permit or registration.

#### Section 201-1.16 Research and development activities

(a) The owner or operator of a facility conducting one or more research and development activities is not required to obtain or modify a permit or registration for those activities, as otherwise required by this part, if the following conditions are met:



(1) The research and development activities do not produce commercial quantities of materials or products for sale;

(2) The research and development activities are exhausted to an appropriate control device;

(3) The facility owner or operator maintains a record of each research and development activity conducted at the facility, including:

(i) The quantity of each material used on a monthly basis;

(ii) The material safety data sheet for each material used;

(iii) 12-month rolling total emissions calculations for each air contaminant emitted to the outdoor atmosphere; and

(4) Total emissions from research and development activities do not exceed, or cause an existing permitted or registered facility to exceed, any of the following threshold levels:

(i) The major facility thresholds described in Paragraph 201-2.1(b)(21) of this Part;

(ii) An emissions cap established pursuant to Subpart 201-4 or 201-7 of this Part; or

(iii) The significant project thresholds as described in Part 231 of this Title at an existing major facility.

(b) Records kept pursuant to Paragraph 201-1.16(a)(3) of this Section must be maintained at the facility for a period of at least five years and must be made available to the Department upon request.

(c) The Department may require the owner or operator of a facility conducting research and development activities to obtain an air permit or registration for those activities if it determines that the activities do not or cannot meet the requirements of this Section or any other requirements of this Title.

## SUBPART 201-2

### DEFINITIONS

#### Section 201-2.1 Definitions.

(a) For the purposes of this Part, the general definitions of Part 200 of this Title apply.

(b) For the purposes of this Part, the following definitions also apply:

(1) '12-month period'. A period of 12 consecutive months determined on a rolling basis where a new 12-month period begins on the first day of each calendar month.

(2) 'Actual emissions'. Those emissions resulting from normal daily operations, verifiable by operating records or other compliance monitoring activities, averaged over the prior two years or some other more representative time interval, justified by the applicant to the department's satisfaction.

(3) 'Affected source'. A stationary source that includes one or more fossil fuel fired combustion units ("affected" units) that are subject to emission reduction requirements or limitations established in accordance with the Federal Acid Rain Program under title IV of the act.

(4) 'Affected states'. All states and tribal lands:

(i) whose air quality may be affected and that are contiguous to the state where the major stationary source is located for which a title V facility permit, permit modification or permit renewal is being proposed; or

(ii) that are within 50 miles of such major stationary source.

(5) 'Applicable requirement'. A standard or other requirement in State or Federal regulations required under the act as it applies to an emission unit or emission source, including requirements that have been promulgated or approved by EPA through rulemaking at the time of issuance of a permit but have future effective compliance dates. Applicable requirements that are in Federal regulations are listed in Part 200, Table 200.10 of this Title. Applicable requirements generally include the following:

(i) any standard or other requirement approved in the New York State Implementation Plan (SIP) that is effective at the time of permit issuance;

(ii) any term or condition of any [preconstruction permits] permit issued pursuant to the requirements of title I of the act, including the Federal Prevention of Significant Deterioration (PSD) Program or new source review in nonattainment areas[,] pursuant to Part 231 of this Title, that are required under the Clean Air Act or are taken by a source to avoid an applicable requirement;

(iii) any standard or requirement promulgated to control emissions under section 111 of the act (including the New Source Performance Standards or NSPS);

(iv) any standard or other requirement promulgated under section 112 of the act, including any requirement to control the accidental release of regulated substances, pursuant to section 112(r)(7) of the act;

(v) any standard, regulation or other requirement of the Acid Rain Program under title IV of the act;

(vi) any compliance assurance requirements established pursuant to section 504(b) or section 114(a)(3) of the act;

(vii) any standard, regulation or other requirement governing [municipal] solid waste incineration and hospital/medical/infectious waste incineration promulgated under section 129 of the act;

(viii) any standard, regulation or other requirement promulgated to protect stratospheric ozone under title VI of the act unless the administrator has determined that such requirements need not be contained in a permit issued under this Part;

(ix) any standard or other requirement of the program to control air pollution from outer continental shelf facilities under section 328 of the act;

(x) any national ambient air quality standard, increment, or visibility requirement under title 1, part C of the act, but only as it would apply to portable emission sources;

(xi) a standard or other requirement for consumer and commercial products, under section 183(e) of the act; and

(xii) a standard or other requirement for tank vessels, under section 183(f) of the act.

(6) 'Area source'. For the purposes of title V permitting, any stationary source of hazardous air pollutants that is not a major stationary source. For the purposes of this Part, the term *area source* shall not include motor vehicles or non-road vehicles.

(7) 'Certificate of representation'. The completed and signed submission required by 40 CFR part 72.20 for certifying the appointment of a designated representative of an affected source or a group of identified affected sources authorized to represent the owners and operator(s) of such sources and of the affected units of such source(s) with regard to matters under the Acid Rain Program.

(8) 'Compliance assurance monitoring'. When required under the act, the methodology used by an owner or operator to detect deviations with sufficient accuracy, precision, reliability, frequency and timeliness in order to determine compliance during a reporting period. Compliance assurance monitoring is used for the purpose of demonstrating compliance with the federally enforceable terms and conditions of a title V facility permit and shall meet the requirements promulgated pursuant to sections 504(b) and 114(a)(3) of the act.

(9) 'Construction'. The initiation of physical on-site construction activities which are of a permanent nature excluding site clearing and excavation. Such activities include, but are not limited to, installation of building supports and foundations, laying underground pipework and construction of permanent storage structures.

(10) [*Draft permit*. The version of a permit offered for public and affected State review under this Part and Part 621 of this Title.] 'Designated representative.' A responsible natural person or official authorized by the owner and operator of an affected source and of all affected units at such source as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR part 72, to represent and legally bind each owner and operator, as a matter of Federal law, in matters pertaining to the Acid Rain Program. Whenever the term responsible official is used in this Part or in any other regulations implementing title V of the act, it shall be deemed to refer to the designated representative with regard to all matters under title IV of the act.

(11) [*Designated representative*. A responsible natural person or official authorized by the owner and operator of an “affected source” and of all affected units at such source as evidenced by a certificate of representation submitted in accordance with subpart B of 40 CFR part 72, to represent and legally bind each owner and operator, as a matter of Federal law, in matters pertaining to the Acid Rain Program. Whenever the term *responsible official* is used in this Part or in any other regulations implementing title V of the act, it shall be deemed to refer to the “designated representative” with regard to all matters under title IV of the act.] ‘Draft permit.’ The version of a permit offered for public and affected State review under this Part and Part 621 of this Title.

(12) ‘Emergency’. Any [situation] event arising from sudden and reasonably unforeseeable [events] circumstances beyond the control of the owner or operator of a facility, [including acts of God, which requires immediate corrective action to restore normal operation and] which causes [the] an emission source to exceed a [technology-based requirement under the permit or State-established emission limitations, due to unavoidable increases in emissions attributable to the situation.] specific permit condition or an applicable requirement. An emergency shall not include [situations] events caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(13) ‘Emission cap’. A federally enforceable limit, term, or condition imposed by a permit, or through regulation, that restricts emissions for the purpose of avoiding an applicable requirement to which the stationary source would otherwise be subject, to establish enforceable emission reductions or to avoid the requirement to obtain a title V facility permit. An emission cap can be facility-wide or limited to one or more emission units.

(14) ‘Emission[s] unit’.

(i) Any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant. An emission unit is represented as a grouping of processes for any one of the following:

(‘a’) a single emission point; or

(‘b’) a group of emission points provided that the appropriate compliance assurance methods can be demonstrated to the satisfaction of the department; or

(‘c’) a facility-wide process that cannot be reasonably associated with one emission point or a group of emission points.

(ii) In defining an emission unit, the following applies:

(‘a’) A defined emission source can only be cited in one emission unit.

(‘b’) A defined emission point can only be cited in one emission unit.

(‘c’) A defined emission point can only be cited in one issued permit.

(‘d’) A defined emission unit can only be cited in one issued permit.

This term is not meant to alter or affect the definition of the term ‘unit’ for the purpose of regulating stationary sources subject to title IV of the act.

(15) ‘Final permit’. The permit issued by the department that has been subject to all applicable review

procedures required by this Title.

(16) ['Fossil fuel'. Natural gas, petroleum, coal, and any form of solid, liquid or gaseous fuel derived from such material for the purpose of creating useful heat.] 'Reserved'.

(17) ['Furnace'. Any device (excluding internal combustion engines and gas turbines) that combusts fossil fuel and/or wood for any purpose and whose emissions to the outside atmosphere only include the products of combustion from fossil fuels and/or wood.] 'Reserved'.

(18) 'General permit'. A permit that may be used to authorize the construction and/or operation of numerous uniform or similar emission source types or categories as an alternative to individual project-specific permitting. General permits may authorize a whole facility or one or more processes or emission units at a facility, as described in Subpart 201-8 of this Part.

(19) 'Generally available control technology or GACT'. Control techniques that are generally available for the reduction and minimization of emissions through the application of control equipment, work practices, efficient process design, or best management practices, considering environmental, energy and economic impact.

(20) 'Laboratory operations'. A workplace where small quantities of chemicals are used for research and development, analytical testing or other support services. Equipment in laboratory operations is designed such that it is easily and safely handled by one person. [Exhaust equipment such as hoods, elephant trunks and lab scale vacuum aspirator systems are used for capturing gases and/or particulate from equipment such as, but not limited to, atomic absorption, gas chromatographs, liquid pouring or mixing stations, reactors and heat sources.]



(21) ‘Major stationary source or major source or major facility’. Any stationary source or any group of stationary sources, any source or any group of sources, or any facility or any group of facilities, that is located on one or more contiguous or adjacent properties and is under common control, belonging to a single major industrial grouping and that are described in subparagraph (i), (ii), (iv), or (v) of this paragraph. For the purposes of this definition, a stationary source, source, or facility or group of stationary sources, sources, or facilities shall be considered part of a single industrial grouping if all of the air pollutant or air contaminant emitting activities at such stationary source, source, or facility, or any group of stationary sources, sources, or facilities on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code), as described in the ‘Standard Industrial Classification Manual’, 1987. Stand alone or common wall residential housing units including compatible commercial activities, which are not regulated by other applicable requirements, where the potential to emit for individual associated combustion or emission sources are below major stationary source, major source, or major facility applicability thresholds (notwithstanding that the sum of these individual combustion or emission sources could exceed major stationary source, major source, or major facility applicability thresholds) shall not be considered a major stationary source, major source, or major facility.

(i) Except as otherwise expressly provided in this paragraph, a stationary source, source, or facility that directly emits or has the potential to emit, 100 tons per year (tpy) or more of any air pollutant or air contaminant regulated under the act except for greenhouse gases (including any stationary source, source or facility which emits only fugitive emissions, of any such pollutant or contaminant, as determined through regulation by the administrator). [For greenhouse gases, a stationary source, source, or facility that directly emits or has the potential to emit 100 tpy or more of greenhouse gases, and 100,000 tpy or more of CO<sub>2</sub> equivalents.] Fugitive emissions shall not be

considered in determining whether a stationary source, source, or facility is major unless it belongs to one of the source categories identified in subparagraph (iii) of this paragraph.

(ii) For hazardous air pollutants other than radionuclides, a stationary source, source, or facility that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant as defined in Part 200 of this Title (including any fugitive emissions of such pollutant), 25 tpy or more of any combination of such hazardous air pollutants (including any fugitive emissions of such pollutants), or such lesser quantity as the administrator may establish by rule. For radionuclides the meaning of major stationary source, major source, or major facility shall be specified by the administrator by rule. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or oil and gas production well (with its associated equipment) and the emissions from any pipeline compressor station or pump station shall not be aggregated with emissions from other units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major stationary sources, major sources, or major facilities.

(iii) source category list:

(‘a’) coal cleaning plants (with thermal dryers);

(‘b’) kraft pulp mills;

(‘c’) portland cement plants;

(‘d’) primary zinc smelters;

(‘e’) iron and steel mills;

(‘f’) primary aluminum ore reduction plants;

(‘g’) primary copper smelters;

(‘h’) municipal incinerators capable of charging more than 50 tons of refuse per day;

(‘i’) hydrofluoric, sulfuric, or nitric acid plants;

(‘j’) petroleum refineries;

(‘k’) lime plants;

(‘l’) phosphate rock processing plants;

(‘m’) coke oven batteries;

(‘n’) sulfur recovery plants;

(‘o’) carbon black plants (furnace process);

(‘p’) primary lead smelters;

(‘q’) fuel conversion plants;

(‘r’) sintering plants;

(‘s’) secondary metal production plants;

(‘t’) chemical process plants (excluding ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140);

(‘u’) fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(‘v’) petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(‘w’) taconite ore processing plants;

(‘x’) glass fiber processing plants;

(‘y’) charcoal production plants;

(‘z’) fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(‘aa’) all other source categories regulated by a standard under section 111 or section 112 of the act.

(iv) A stationary source, source, or facility that is located in a nonattainment area or an attainment area of the State within the ozone transport region where the stationary source, source, or facility potential to emit equals or exceeds the emissions thresholds (in tpy) identified in clause ('a'), ('b'), ('c'), ('d'), or ('e') of this subparagraph. Fugitive emissions shall not be considered in determining whether a stationary source, source, or facility is major unless it belongs to one of the source categories listed in subparagraph (iii) of this paragraph.

(a) For areas classified as marginal or moderate ozone nonattainment, any stationary source, source, or facility with the potential to emit 100 tpy or more of oxides of nitrogen (NO<sub>x</sub>) or 50 tpy or more of volatile organic compounds (VOC).

(b) In the New York City metropolitan area or the Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, or Woodbury, any stationary source, source, or facility with the potential to emit 25 tpy or more of NO<sub>x</sub> or VOC.

(c) For attainment areas of the State within the ozone transport region, any stationary source, source, or facility with the potential to emit 100 tpy or more of NO<sub>x</sub> or 50 tpy or more of VOC.

(d) For areas classified as moderate PM-10 nonattainment, any stationary source, source, or facility with the potential to emit 100 tpy or more of PM-10.

(e) For areas classified as PM-2.5 nonattainment, any stationary source, source, or facility with the potential to emit 100 tpy or more of PM-2.5.

(v) For purposes of determining the applicability of Part 231 of this Title with respect to prevention of significant deterioration (PSD) requirements only, a stationary source, source, or facility located in an attainment area of the State where the stationary source, source, or facility potential to emit of any attainment contaminant regulated under the act, except for greenhouse gases, equals or exceeds 250 tpy, or equals or exceeds 100 tpy if the stationary source, source, or facility belongs to one of the source categories listed in clauses (iii)(‘a’) through (‘z’) of this paragraph. [For greenhouse gases, a stationary source, source, or facility that directly emits or has the potential to emit 100 or 250 tpy or more of greenhouse gases, as applicable, and 100,000 tpy or more of CO<sub>2</sub> equivalents.] Fugitive emissions shall not be considered in determining whether a stationary source, source, or facility is major unless it belongs to one of the source categories listed in subparagraph (iii) of this paragraph.

(22) ‘Malfunction’. Any sudden, infrequent, and not reasonably preventable [and unavoidable] failure of an air cleaning device or air contamination source to operate in compliance with all applicable Parts of this Title, [and shall not include] not including failures that are caused entirely or partially by [poor] improper maintenance, careless operation, or other preventable conditions.

(23) [‘Permit shield’. A provision the department includes in a Title V facility permit that indicates that compliance with conditions of the permit shall be deemed compliance with the applicable requirements of the act as of the date of permit issuance, provided that the applicable requirements are specifically identified in the permit, or the department determines, in writing, when approving the permit, that other requirements specifically identified do not apply to the facility.] Reserved.

(24) ‘Portable emission source’. An emission source that can be carried or moved [from one location (*i.e.*, any single site at a building, structure, facility, or installation) to another]. Indicators of portability include, but are not limited to, wheels, skids, carrying handles, dolly or trailer. A portable emission source

shall be treated as a stationary emission source if it remains at the same facility for 12 consecutive months.

(25) ‘Proposed permit’. The version of a permit that the department proposes to issue and forwards to the administrator for review.

(26) ‘Renewal’. The reissuance, recertification or extension of any permit or registration for previously approved activities which will be continued [on the same site] without material change at the same facility.

(27) ‘Research and development activities’. The primary purpose of such activities is to conduct research and development into processes and products, where such activities are conducted under the close supervision of technically trained personnel. Research and development activities do not include activities whose primary purpose is to produce commercial quantities of materials.

(28) ‘Responsible official’. A president, vice president, secretary, treasurer, general partner, proprietor, principal executive officer, ranking elected official, or any other person who performs policy or decision making functions and is authorized to legally bind a corporation, partnership, sole proprietorship, or government entity which owns or operates a facility that is subject to the provisions of this Part. Whenever the term ‘responsible official’ is used in this Part or in any other regulations implementing title V of the act, it shall be deemed to refer to the “designated representative” with regard to all matters under title IV of the act.

(29) ‘Temporary emission source’.

(i) [an] An emission source that is transient in nature and will be operated at a facility for a single period of less than 90 consecutive days commencing from the first day of operation to the date of removal; or

(ii) [an] An emission source that will be constructed and operated for less than 30 days per calendar year and then removed.

[(30) 'Title V facility permit'. Permit for a facility or a defined area source, group, or category of emission units at a facility that is issued by the department pursuant to Subpart 201-6 of this Part.

(31) 'Title V facility permit modification'. A revision to a title V facility permit that meets the requirements of section 201-6.6 (c) and (d) of this Part and Part 621 of this Title.

(32) 'Title V facility permit revision'. Any modification or administrative amendment to a title V facility permit as defined in Subpart 201-6 of this Part.]



## SUBPART 201-3

### PERMIT EXEMPT AND TRIVIAL ACTIVITIES

#### Section 201-3.1 Applicability.

(a) Except as provided in [subdivision] subdivisions (c) and (d) of this section, [the owner or operator of] an emission source listed as an exempt or trivial activity in this Subpart is exempt from the registration and permitting provisions of Subparts 201-4, 201-5, and 201-6 of this Part. This does not mean that these activities are exempted from other applicable requirements or from applicable registration and/or permitting requirements of local air pollution control agencies.

(b) Unless otherwise provided for in this Chapter, emissions from exempt [and trivial] activities must be included in potential to emit calculations when determining whether [an] a facility or emission source is subject to:

(1) title V facility permitting pursuant to Subpart 201-6 of this Part; and/or

(2) new source review pursuant to Part 231 of this Title.

(c) If the total potential to emit [for all] from one or more exempt [and trivial] activities at a facility exceeds, or causes the facility to exceed, the major facility threshold, as defined in Subpart 201-2 of this Part, [the facility is both subject to the provisions of Subpart 201-6 of this Part and no longer considered exempt or trivial for permitting purposes.] those activities are no longer considered to be exempt from permitting. Such activities are still considered to be exceptions as described in Part 212 of this Chapter.

(d) If physical and/or operational restrictions are required to maintain the total potential to emit [for] from one or more of the listed exempt [and trivial] activities below the title V applicability thresholds described in

Subpart 201-6 of this Part, or new source review requirements described in Part 231 of this Title, the [activity is no longer] activities are not considered exempt [or trivial] for permitting purposes. Such activities are still considered to be exceptions as described in Part 212 of this Chapter.

#### Section 201-3.2 Exempt activities.

(a) The owner or operator of an emission source or activity that is listed as being exempt may be required to certify that it is operated within the specific criteria described in this Subpart. The owner or operator of any such emission source or activity must maintain all records necessary for demonstrating compliance with this Subpart on-site for a period of five years, and make them available to representatives of the department upon request.

(b) The owner or operator of any emission source or activity that is listed as being exempt in this section [on the basis of the use of appropriate emission controls] shall operate and maintain [those] the emission source and any associated emissions controls in a manner consistent with manufacturer's specifications and good engineering practices. Failure to do so constitutes a violation of this Part.

(c) The category headings used in the following listing of exempt activities are strictly for organizational purposes and are not intended to be definitive. The following activities are exempt from permitting requirements at non-title V facilities, but must be listed in title V facility permit applications:

#### Combustion

(1) Stationary or portable combustion installations [with:] where the furnace has:

(i) a maximum rated heat input capacity less than 10 million Btu/hr burning liquid and gaseous fuels [other than coal or wood]; or

(ii) a maximum rated heat input capacity of less than one million Btu/hr burning [coal or wood] solid

fuels.

This activity does not include combustion equipment burning any material classified as a solid waste, as defined in Part 360 of this Title, a hazardous waste, as defined in Part 371 of this Title, or waste oil, as defined in Subpart 225-2 of this Title.

(2) Space heaters burning waste oil at [automotive service] eligible facilities, as defined in Subpart 225-2 of this Title, generated on-site or at a facility under common control, alone or in conjunction with used oil generated by a do-it-yourself oil changer as [defined] described in Subpart 374-2 of this Title.

(3) Stationary or portable internal combustion engines which meet the following criteria:

(i) are liquid or gaseous fuel powered, and located within the New York City metropolitan area or the Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, or Woodbury, and have maximum mechanical power rating of less than 200 brake horsepower; or

(ii) are liquid or gaseous fuel powered, and located outside of the New York City metropolitan area or the Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, or Woodbury, and have maximum mechanical power rating of less than 400 brake horsepower; or

(iii) are gasoline powered and have a maximum mechanical power rating of less than 50 brake horsepower.

(4) 'Reserved'.

(5) Gas turbines with a heat input at peak load less than 10 million Btu per hour.

(6) Emergency power generating stationary internal combustion engines, as defined in section 200.1(cq) of this Title[, and engine test cells at engine manufacturing facilities that are utilized for research and development, reliability performance testing, or quality assurance performance testing]. Stationary internal combustion engines used for peak shaving and/or demand response programs are not exempt.

#### Combustion-Related

(7) Non-contact water cooling towers and water treatment systems for process cooling water and other water containers designed to cool, store or otherwise handle water that has not been in direct contact with gaseous or liquid process streams.

#### Agricultural

(8) Feed and grain milling, cleaning, conveying, drying and storage operations including grain storage silos, where such silos exhaust to an appropriate emission control device, excluding grain terminal elevators with permanent storage capacities over 2.5 million U.S. bushels, and grain storage elevators with capacities above one million bushels.

(9) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

#### Commercial - Food Service Industries

(10) Flour silos at bakeries, provided all such silos are exhausted through an appropriate emission control device.

(11) Emissions from flavorings added to a food product where such flavors are manually added to the product.

#### Commercial - Graphic Arts

(12) Screen printing inks/coatings or adhesives which are applied by a hand-held squeegee. A 'hand-held squeegee' is one that is not propelled through the use of mechanical conveyance and is not an integral part of the screen printing process.

(13) Graphic arts processes at facilities located outside the New York City metropolitan area or the Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, or Woodbury [whose facility-wide total emissions of volatile organic compounds from inks, coatings, adhesives, fountain solutions and cleaning solutions are less than three tons per year on a 12-month rolling basis] with facility-wide total annual actual emissions of volatile organic compounds from graphic arts processes and associated cleaning operations of less than three tons on a 12-month rolling basis.

(14) Graphic label and/or box labeling operations where the inks are applied by stamping or rolling.

(15) Graphic arts processes which are specifically exempted from regulation under Part 234 of this Title, with respect to emissions of volatile organic compounds which are not given an A rating as described in Part 212 of this Title.

#### Commercial - Other

(16) Gasoline dispensing sites registered with the department pursuant to Part [612] 613 of this Title.

(17) Surface coating and related activities at facilities which use less than 25 gallons per month of total coating materials, or with actual VOC emissions of 1,000 pounds or less from coating materials in any 12-month period. Coating materials include all paints and paint components, other materials mixed with paints prior to application, and cleaning solvents, combined. This exemption is subject to the following:

(i) the facility is located outside of the New York City metropolitan area or the Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, or Woodbury; and

(ii) all abrasive cleaning and surface coating operations are performed in an enclosed building where such operations are exhausted into appropriate emission control devices.

(18) Abrasive cleaning operations which exhaust to an appropriate emission control device.

(19) Ultraviolet curing operations.

#### Municipal/Public Health Related

(20) Landfill gas ventilating systems at landfills with design capacities less than 2.5 million megagrams (3.3 million tons) and 2.5 million cubic meters (2.75 million cubic yards), where the systems are vented directly to the atmosphere, and the ventilating system has been required by, and is operating under, the conditions of a valid Part 360 permit, or order on consent.

#### Storage Vessels

(21) Distillate fuel oil, residual fuel oil, and biodiesel [liquid asphalt] storage tanks with storage capacities below 300,000 barrels.

(22) Pressurized fixed roof tanks which are capable of maintaining a working pressure at all times to prevent emissions of volatile organic [compound] compounds to the outdoor atmosphere.

(23) External floating roof tanks which are of welded construction and are equipped with a metallic-type shoe primary seal and a secondary seal from the top of the shoe seal to the tank wall.

(24) External floating roof tanks which are used for the storage of a petroleum or volatile organic liquid with a true vapor pressure less than 4.0 psi (27.6 kPa), are of welded construction and are equipped with one of the following:

(i) a metallic-type shoe seal;

(ii) a liquid-mounted foam seal;

(iii) a liquid-mounted liquid-filled type seal; or

(iv) equivalent control equipment or device[;].

(25) Storage tanks, including petroleum liquid storage tanks as defined in Part 229 of this Title and liquid asphalt storage tanks, with capacities [under] less than 10,000 gallons, except those subject to either Part 229 or Part 233 of this Title.

(26) Horizontal petroleum or volatile organic liquid storage tanks.

(27) Storage [silos storing] of solid materials, provided all such [silos are] storage is exhausted through

an appropriate emission control device. This exemption does not include raw material, clinker or finished product storage [silos] at Portland cement plants.

## Industrial

(28) Processing equipment at existing sand and gravel and stone crushing plants which were installed or constructed before August 31, 1983, where water is used for operations such as wet conveying, separating and washing. This exemption does not include processing equipment at existing sand and gravel and stone crushing plants where water is used for dust suppression.

(29) Any sand and gravel [processing or crushed stone processing], crushed stone, concrete, or recycled asphalt processing line at a non-metallic mineral processing facility that:

(i) is a permanent or fixed installation with a maximum rated processing capacity of 25 tons of minerals per hour or less;

(ii) is a portable emission source with a maximum rated processing capacity of 150 tons of minerals per hour or less; or

(iii) is used exclusively to screen minerals at a facility where no crushing or grinding takes place.

(30) *Reserved.*

(31) Surface coating operations which are specifically exempted from regulation under [Part 228 of this Title] Subparts 228-1 and 228-2 of this Chapter, with respect to emissions of volatile organic compounds which are not given an A rating pursuant to Part 212 of this Title.



(32) Pharmaceutical tablet branding operations.

(33) Thermal packaging operations, including but not limited to, thermal labeling, blister packing, shrink wrapping, shrink banding, and carton gluing.

(34) Powder coating operations.

(35) All tumblers used for the cleaning and/or deburring of metal products without abrasive blasting.

(36) Presses used exclusively for molding or extruding plastics except where halogenated polymers are used or where halogenated carbon compounds or hydrocarbon solvents are used as foaming agents.

(37) Concrete batch plants where the cement weigh hopper and all bulk storage silos are exhausted through fabric filters, and the batch drop point is controlled by a shroud or other emission control device.

(38) Cement storage operations not located at Portland cement plants where materials are transported by screw or bucket conveyors.

(39) Solvent cleaning processes:

(i) Cold cleaning degreasers with an open surface area of 11 square feet or less and an internal volume of 93 gallons or less or, having an organic solvent loss of 3 gallons per day or less.

(ii) Conveyorized degreasers with an air/vapor interface smaller than 22 square feet (2.0 m<sup>2</sup>), unless subject to the requirements in 40 CFR 63, subpart T.

(iii) Open-top vapor degreasers with an open-top area smaller than 11 square feet (1.0 m<sup>2</sup>), unless subject to the requirements in 40 CFR 63, subpart T.

#### Miscellaneous

(40) Ventilating and exhaust systems for laboratory operations. [Laboratory operations do not include processes having a primary purpose to produce commercial quantities of materials.] This exemption does not include laboratory operations used to produce products for sale except in a de minimis manner.

(41) Exhaust or ventilating systems for the melting of gold, silver, platinum and other precious metals.

(42) Exhaust systems for paint mixing, transfer, filling or sampling and/or paint storage rooms or cabinets, provided the paints stored within these locations are stored in closed containers when not in use.

(43) Exhaust systems for solvent transfer, filling or sampling, and/or solvent storage rooms provided the [solvent stored within these locations] solvents are stored in closed containers when not in use.

(44) [Research and development activities, including both stand-alone and activities within a major facility, until such time as the administrator completes a rule making to determine how the permitting program should be structured for these activities.] ‘Reserved.’

(45) The application of odor counteractants and/or neutralizers.

(46) Hydrogen, natural gas, and methane fuel cells.

(47) Dry cleaning equipment that uses only water-based cleaning processes or those using liquid carbon dioxide.

(48) Manure spreading, handling and storage at farms and agricultural facilities.

(49) Covered manure storage at farms that exhausts to a flare or other appropriate emission control device. This activity does not include anaerobic digestion processes operating with or without stationary or portable combustion installations.

(50) Coffee roasting processes which have a maximum operating capacity of 3 kilograms or less of green coffee beans per batch and no greater than 25 tons of green coffee beans per year, that are vented through an unobstructed, vertical stack that ensures proper dispersion of air contaminants.

(51) Process emission sources at breweries with total combined beer and/or malt liquor production of 60,000 barrels per year or less.

(52) Process emission sources at wineries with total combined wine and/or brandy production of 700,000 gallons per year or less.

(53) Process emission sources at distilleries with 10,000 distiller's bushels of grain input per year or less.

(54) Process emission sources at wood and lumber drying kilns with an annual throughput of untreated wood of 275,000 board feet or less.

(a) The owner or operator of an emission source or activity that is listed as being trivial in this section may be required to certify that it is operated within the specific criteria described in this Subpart. The owner or operator of any such emission source or activity must maintain all required records on-site for a period of five years and make them available to representatives of the department upon request.

(b) The owner or operator of any emission source or activity that is listed as being trivial in this section[, on the basis of the use of appropriate emission controls,] shall operate and maintain [those] the emission source and any associated emissions controls in a manner consistent with manufacturer's specifications and good engineering practices. Failure to do so constitutes a violation of this Part.

(c) The category headings used in the following listing of trivial activities are strictly for organizational purposes and are not intended to be definitive. The following activities are trivial and are exempt from permitting requirements and do not need to be included in the title V facility permit application:

#### Combustion

- (1) Boiler water treatment operations.

#### Domestic / Work Station Comfort and Related

- (2) Any emission source or process constructed or operated at a domestic residence strictly for domestic use.

- (3) Vacuum cleaning systems used exclusively for office type areas at industrial facilities, or commercial or residential housekeeping.

- (4) Ventilating systems used exclusively for temperature and humidity control of buildings for the

comfort of people living or working within the building except those systems which are subject to applicable requirements under title VI of the act.

(5) Exhaust systems for the storage of portable containers, drums, and bags of chemicals in rooms, buildings and warehouses, subject to the following:

(i) the rooms, buildings and warehouses subject to this exemption are solely for the purpose of chemical storage, and no mixing, transfer or filling operations with the exception of sampling for quality assurance/quality control purposes, take place within such areas; and

(ii) the chemicals stored in such areas are maintained in sealed containers.

(6) Smoking rooms and areas.

(7) Bathroom/toilet vents.

(8) Beauty salons, nail salons, and barber shops.

(9) Laundry dryers, extractors, or tumblers used to clean fabrics with water solutions of bleach and detergents, where the emissions of such operations are controlled by appropriate emission control devices.

#### Mobile Sources and Mobile Source Related

(10) Engine exhaust emissions and/or refueling emissions generated from mobile and portable powered vehicles and equipment used for the propulsion or operation of passengers and/or freight transportation vehicles, marine vehicles and equipment, construction and vehicles and equipment powered by non-road

engines, farm vehicles and equipment, competition and entertainment vehicles and equipment, and/or any other type of mobile or portable engine powered vehicles or equipment when these vehicles or equipment are operated anywhere outside of an enclosed facility for the purpose of their design and intended use or for compliance assessment with any safety or emission control or inspection programs sanctioned by New York State, the Federal government or any governmental entity empowered to carry out such activities.

(11) Engine exhaust emissions and/or refueling emissions generated from mobile and portable powered vehicles and equipment such as competition and entertainment vehicles and equipment, farm vehicles and equipment, construction and vehicles and equipment powered by non-road engines, automobiles, motorcycles, trucks, buses, marine vehicles and equipment, small engine powered tools and equipment, or any other type of mobile or portable engine powered vehicles or equipment which are collected and/or vented in any manner to the outdoor atmosphere when these vehicles and equipment are operated inside of an enclosed structure or under a covered structure for the purposes of their design and intended use, public safety, comfort or entertainment, facility maintenance, vehicle or equipment repair, adjustment or testing, or compliance assessment with any safety or emission control or inspection programs sanctioned by New York State, the Federal government, or any governmental entity empowered to carry out such activities.

(12) The use of products such as antifreeze and fuel additives for the purpose of maintaining motor vehicles.

(13) Fugitive emissions related to movement of passenger vehicles, provided the emissions are not counted for applicability purposes and any required fugitive dust control plan or its equivalent is submitted.

#### Agricultural

(14) Ventilating systems used in buildings to house animals.

## Commercial - Food Service Industries

(15) Emissions from process, exhaust or ventilating systems in bakeries and restaurants which derive over 50 percent of their revenues from retail sales on premises.

(16) Non-conveyorized bakery ovens, including batch ovens, which are defined as a non-conveyor belt oven operating a single baking cycle in which a determinate amount of product is cooked at one baking.

(17) Bakery ovens used exclusively to produce baked goods leavened chemically in the absence of yeast.

(18) Process or exhaust or ventilating systems involved in the preparation of food, food blanching or cooking in water.

(19) Process, exhaust or ventilating systems or stationary combustion installations exclusively involved in the production of maple syrup.

## Commercial - Graphic Arts

(20) Lead melting pots used in printing establishments.

(21) Blueprint machines.

(22) Photocopying, photographic processing or related equipment.

(23) Proof press operations.

(24) Heat sealing operations which are used to seal and separate polyethylene and polypropylene bags.

#### Commercial - Other

(25) Batch process kilns used for firing ceramic ware, subject to the following:

(i) the exhaust stream does not contain emissions of fluorides, lead, and/or beryllium; and

(ii) the total heat input is less than one million Btu/hr.

#### Municipal/Public Health Related

(26) Equipment used exclusively to generate ozone for water treatment processes.

(27) Air stripping processes utilized on public drinking water supplies.

(28) [Air strippers and soil vents used to remediate gasoline spills, where the air stripper or soil vent is located at a State-funded site, or required under the provisions of an order on consent or stipulation agreement, and the operation of the air strippers or soil vents are conducted under the supervision of the department and are properly controlled as required by the department.] Sub-slab depressurization systems that are not installed or operated as a remedial system for soil or groundwater contamination.

(29) [Air strippers and soil vents that are:

(i) required by the provisions of an order on consent: or

(ii) operated under an agreement with, and under the supervision of, the department: or



(iii) operated at a superfund site.] Remedial systems used to remediate soil and groundwater contamination that are required under the provisions of an order on consent or stipulation agreement, operated under the supervision of the department, and are properly controlled as required by the department.

(30) Air strippers and [soil vents operating] monitoring wells operated for test purposes to qualify and quantify air emissions for remediation projects [and for] where such operations do not exceed a time period that is acceptable to the department.

(31) Emissions from the storage and application of road salt (calcium chloride or sodium chloride).

(32) All process emission sources which are located at private, public, or vocational education institutions, where the emissions are primarily the result of teaching and training exercises, and the institution is not engaged in the manufacture of products for commercial sale.

(33) 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. This activity does not include bypass stacks or vents on incinerators or any other equipment, or any other vents or stacks that operate or release air contaminants to the outdoor atmosphere on a frequent or regular basis.

(34) Snow plowing, street sweeping, sanding and ashing of streets and roads to abate traffic hazards.

(35) Emergency road flares.

(36) Road and lot paving and striping operations.

(37) Public or private roadways, parking lots.

(38) Manhole covers.

(39) Sewers.

(40) Storm drains and vents.

(41) Solid waste handling equipment, including but not limited to: dumpsters, transfer stations, wood chippers, recycling operations, composting operations, [tub grinders, construction and demolition waste crushers] and associated activities. This activity does not include solid waste incinerators and other thermal treatment technologies, scrap metal and automotive shredding operations, or construction and demolition waste crushers.

(42) Excavation for the repair of underground utility lines such as water, electric, or natural gas.

(43) Asbestos demolition and removal work subject to 40 CFR part 61, subpart M and/or 12 NYCRR Part 56.

#### Storage Vessels

(44) Storage vessels, tanks and containers with a capacity of less than 750 gallons.

#### Maintenance and Construction Related Activities

(45) The following activities are considered trivial when they occur strictly for maintenance or construction activities: plastic pipe welding, soldering, brazing, cutting torches, janitorial activities, steam cleaning, water washing, acid and caustic washing activities, miscellaneous use of solvents, adhesives and caulking, miscellaneous sandblasting, non-asbestos insulation removal, application of refractory and insulation, the periodic use of air for clean-up, [and,] the process of demolition and rebricking boilers, smelters, furnaces and kilns (this does not include the subsequent operation of such equipment), the surface coating of equipment and buildings as is related to maintenance and construction, and activities which occur for maintenance of grounds such as lawn care, weed control and pest control.

(46) Excavation for new construction.

#### Industrial

(47) Degreasing units which exclusively use non-hazardous air pollutant acids.

(48) Degreasing units which exclusively use caustics (*e.g.*, potassium hydroxide and sodium hydroxide).

(49) 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 16 square inches, and is returned to a remote reservoir containing the solvent.

(50) 'Reserved'.

(51) Cold cleaning degreasers with an internal volume less than or equal to two gallons.

(52) Hand-held or manually operated equipment used for buffing, polishing, carving, cutting, drilling,

machining, routing, sanding, sawing, surface grinding, sand blasting or turning ceramic art work, ceramic precision parts, leather, metal parts, plastics, fiberboard, fiberglass, masonry, carbon, glass, graphite, wood or rubber.

(53) Manual surface coating/painting processes which exclusively use brushes, rollers, hand held spray guns with a capacity less than three ounces, or aerosol cans.

(54) Hand-held or manually operated welding, brazing and soldering equipment.

(55) Acetylene, butane, and propane torches.

(56) Equipment used for hydraulic or hydrostatic testing.

(57) Equipment lubricating systems, including metal cutting coolants and oils.

(58) Pneumatic starters used to start reciprocating engines, turbines, and other equipment.

(59) Instrument air systems, excluding fuel-fired compressors.

(60) Air vents from air compressors and pneumatically operated equipment emitting ambient air.

(61) Drum washing operations, where such operations are necessary to meet Resource Conservation and Recovery Act (RCRA) standards.

(62) Vacuum producing devices where only ambient air and the oil emissions from the vacuum

producing mechanism itself are exhausted.

(63) Woodworking operations [where no surface coating takes place,] provided such operations exhaust to a sawdust collection system controlled by an appropriate emission control device. This activity does not include surface coating operations.

(64) Sawmills, provided all processes are located at least 500 feet from any recreational area, school, or private residence and all residues from debarking, planing, sawing, etc., are contained in such a manner as to minimize fugitive emissions.

(65) Equipment used to mix and package soaps, vegetable oil, grease, animal fat, and nonvolatile aqueous salt solutions, provided appropriate lids and covers are utilized.

(66) Drop hammers or hydraulic presses for forging or metalworking.

(67) Transportable chemical containers including rail cars, portable tanks, totes and trailers.

#### Miscellaneous

(68) Open fires as [described] defined in Part 215 of this Title.

(69) Fire training activities as [described in] allowed under Part 215 of this Title.

(70) Fire suppression systems.

(71) Fecal incinerators with a charging rate not exceeding 10 pounds per hour, such as those used on

certain vehicles or other special cases.

(72) Paint mixing operations located at retail paint, hardware or department stores where the paint is sold in five gallon or smaller containers.

(73) Rifle and pistol ranges.

(74) Aircraft de-icing operations.

(75) Contaminant detectors, sampling devices and recorders.

(76) Emissions from natural gas odoring activities.

(77) Battery charging areas except those located at battery manufacturing plants.

(78) Incubators.

(79) The venting of compressed natural gas, butane or propane gas cylinders.

(80) Coal car thaw-pit burners.

(81) Use of office equipment and products including, but not limited to, desktop printers, fax machines, scanners and photocopiers used as printers, but not including graphic arts processes as defined in Part 234 of this Title.

(82) Consumer use of paper trimmers/binders.

(83) Blacksmith forges.

(84) [Carbon dioxide lasers, used only on metals and other materials which do not emit hazardous air pollutants in the process.] Laser and plasma cutters and trimmers using appropriate emissions control devices that do not emit hazardous air pollutants.

(85) [Laser trimmers using appropriate emission control devices.] 'Reserved'.

(86) Environmental chambers not using hazardous air pollutant gases.

(87) Shock chambers.

(88) Humidity chambers.

(89) Solar simulators.

(90) Process water filtration systems and demineralizers.

(91) Demineralized water tanks and demineralizer vents.

(92) Steam leaks.

(93) Steam vents.

(94) Emissions of water vapor, oxygen, nitrogen, inert gases such as argon, helium, neon, krypton and xenon, hydrogen, ethane, and trace constituents included in raw materials where the constituents are less than 1 percent by weight for any regulated air pollutant, or 0.1 percent by weight for any carcinogen listed by the United States Department of Health and Human Services' [Twelfth Annual] Fourteenth Report on Carcinogens [(2011)] (2016) (see Table 1, Section 200.9 of this Title).

(95) Emissions of carbon dioxide and methane, except where specifically regulated by a Federal or State law or regulation.

(96) Solvent cleaning of parts and equipment performed exclusively by hand wiping or hand cleaning unless such cleaning reaches the applicability criteria of Subpart 226-2 of this Title.



## SUBPART 201-4

### MINOR FACILITY REGISTRATION

#### Section 201-4.1 Applicability.

(a) Owners or operators of facilities with emission sources that are not [considered to be] exempt or trivial pursuant to Subpart 201-3 of this Part, and not otherwise required to obtain a permit pursuant to Subparts 201-5 or 201-6 of this Part, are required to register with the department as specified in this Subpart. Such facilities include, but are not limited to:

(1) any facility which has annual actual emissions of regulated air contaminants, each of which do not exceed the appropriate threshold in section 201-4.5(a) of this Subpart, regardless of the facility's potential to emit for that contaminant; and

(2) any facility [, except a stationary or portable combustion installation,] with annual actual emissions of all [persistent, bioaccumulative or toxic compounds] high toxicity air contaminants in an amount that is less than the [threshold] thresholds listed in Table 1 of Subpart 201-9 of this Part. The facility's annual actual emissions of high toxicity air contaminants do not include emissions from stationary or portable combustion installations or activities considered to be exempt or trivial, as described in Subpart 201-3 of this Part.

(b) The owner or operator of a facility that otherwise meets the criteria in subdivision (a) of this section may be required to apply for a State facility permit pursuant to Subpart 201-5 of this Part if the department determines that permit conditions are necessary to ensure the facility's continuous compliance with one or more applicable requirements and/or the requirements of this Chapter. The facility owner or operator shall have six months from receipt of the department's determination to submit a complete permit application.

Section 201-4.2 General Requirements.

(a) Registrations are ministerial actions for the purposes of Part 617 State Environmental Quality Review of this Title.

(b) Registrations are not subject to Part 621 Uniform Procedures of this Title.

(c) Registrations shall authorize both construction and operation of the listed emission sources at the registered facility.

(d) Where the activity requiring registration is associated with the construction of a new facility or emission source, or modification of an existing facility or emission source, the owner or operator may not commence construction or modification until a new registration certificate is [received from] issued by the department. The department will notify the facility owner or operator whether the registration application is acceptable within 30 days of receipt of the application.

(e) New and modified registrations issued after [the effective date of this Subpart] February 22, 2013 are valid for 10 years from the date of issuance.

(f) The department may withdraw or revoke, consistent with the suspension and revocation procedures set forth in Part 621 of this Title, any registration upon a determination that the registered activity poses the potential for a significant adverse impact to the public health, safety, welfare, or the environment.

(g) The owner or operator of a facility holding a registration issued [prior to the effective date of this Subpart] without an expiration date must submit an updated registration application, as described in this Subpart, to the department within 90 days of receiving written notification from the department.

#### Section 201-4.3 Application Content.

(a) All registration applications submitted to the department shall be signed by a responsible official and provided in a format acceptable to the department. At a minimum, registration applications must include the following:

(1) identifying information, including [owner] the owner's name and address, [facility] and the facility's name and address;

(2) if the application is for a new facility, a location map with the facility location clearly marked on it;

(3) a detailed description of the operations carried out at the facility including all emission sources, processes and products;

(4) a listing of the Standard Industrial Classification Codes (SIC) or North American Industry Classification System codes (NAICS) that corresponds to the primary operations carried out at the facility;

(5) a list of all regulated air pollutants and [persistent, bioaccumulative and toxic compounds] high toxicity air contaminants, as listed in Subpart 201-9 of this Part, emitted from the facility, including the rate and quantity of emissions in sufficient detail for the department to determine all State and Federal requirements that are applicable to the facility;

(6) a list of all emission sources at the facility, except those that are exempt or trivial pursuant to Subpart 201-3 of this Part;

(7) a listing of the applicable New York State requirements in this Chapter;

(8) a listing of the applicable Federal requirements; and

(9) any other related information requested by the department.

(b) Renewal applications for air facility registrations must be submitted to the department no later than 60 days prior to the [date of registration expiration] expiration date of the registration. The owner or operator of an existing registered facility may continue to operate that facility while the renewal application is processed provided the application is submitted as described in this subdivision.

#### Section 201-4.4 Notification of changes in ownership.

[(a) Owners or operators of registered facilities must provide the department with an updated registration application at least 30 days in advance of undertaking modifications to the facility that will make the facility subject to additional State or Federal regulatory requirements.

(b)] Owners or operators of registered facilities must notify the department of a change or transfer of ownership within 30 days of such transfer by submitting an updated registration application and application for permit transfer to the department.

#### Section 201-4.5 Emission capping by rule.

[(a) Any facility with the potential to emit one or more regulated air contaminants at a rate greater than or equal to the major facility threshold or any lesser threshold in an applicable requirement, but with actual emissions less than the thresholds described below, may elect to accept a federally enforceable emission cap on those contaminants. Facilities operating pursuant to this section must emit less than the following thresholds

during every 12-month period:

(1) 50 percent of the major facility threshold for any regulated air contaminant;

(2) 50 percent of any lesser threshold for a single hazardous air pollutant that the administrator may establish by rule and upon incorporation in State regulation; or

(3) 50 percent of any lesser threshold established in State regulations for volatile organic compounds.]

(a) ‘Purpose’. The purpose of this section is to provide a method of establishing federally enforceable emission caps known as capping by rule. A facility may cap by rule as follows:

(1) ‘Major Facility Thresholds’. To avoid the requirement for a Title V facility permit, the facility owner or operator must maintain actual emissions of each regulated air contaminant at less than 50 percent of the major facility thresholds, as described in Paragraph 201-2.1(b)(21) of this Subpart, during each 12-month period; and/or

(2) ‘Applicable State Thresholds’. To avoid the control requirements of a state regulation, the facility owner or operator must maintain actual emissions of volatile organic compounds at less than 50 percent of an applicability threshold based on potential to emit in that regulation during each 12-month period.

(b) If the facility owner or operator determines that an emission limitation or requirement established by this section is unacceptable, the owner or operator must apply for either a State facility permit pursuant to Subpart 201-5 of this Part or a title V facility permit pursuant to Subpart 201-6 of this Part.

(c) The owner or operator of any facility subject to this section must maintain all required records on-site for a period of five years and make them available to representatives of the department upon request.

(d) The owner or operator of any facility that meets the criteria established pursuant to subdivisions (f), (g) and (h) of this section, and uses air pollution control equipment to comply with an emissions cap established pursuant to this section, shall operate and maintain such equipment in a manner consistent with manufacturer's specifications. If such control equipment is required by any other Part of this Chapter and would limit emissions to a greater degree than the thresholds established in this section then the more stringent emission limitation applies.

(e) The facility owner or operator must monitor and record process parameters to the extent necessary to determine actual emissions, including but not limited to the following:

(1) information on emission control equipment type and description, make and model, and emission sources served by the emission control unit;

(2) information on emission control equipment design, including where applicable: pollutant(s) controlled; control effectiveness; maximum design or rated capacity; inlet and outlet temperatures; concentrations of each pollutant controlled; catalyst data (type, material, life, volume, space velocity, ammonia injection rate and temperature); baghouse data (design, cleaning method, fabric material, flow rate, air/cloth ratio); electrostatic precipitator data (number of fields, cleaning method, and power output); scrubber data (type, design, sorbent type, pressure drop); other design data as appropriate; all emission source test information; and

(3) a monthly log of hours of operation including notation of any control equipment breakdowns, [upsets] malfunctions, repairs, maintenance and any other deviations from design parameters.

(f) The owner or operator of any stationary combustion installation subject to this [Subpart] section must keep and maintain the following records:

(1) Records indicating the type and quantity of fuel combusted at the facility during every 12-month period. Facilities capable of using more than one fuel must also demonstrate that the [annual] actual emissions for every 12-month period do not exceed the thresholds listed in subdivision (a) of this section, based on the type and quantity of fuel used.

(2) Information on equipment type, make and model, maximum design process rate or maximum power input/output, all source test information, fuel heating value, percent sulfur for fuel oil, and a monthly log of hours of operation.

(g) The owner or operator of any facility that operates coating/solvent emission sources or uses a coating, solvent, ink, sealant or adhesive and is subject to this [Subpart] section must keep and maintain the following records:

(1) a current list of all coatings, solvents, inks, sealants and adhesives in use. This list must include: information on the manufacturer, brand, product name or code, VOC content in pounds per gallon, hazardous air pollutants (HAPs) content in pounds per gallon, or other manufacturer's product specifications;

(2) a description of equipment used during and after coating, solvent, ink sealant or adhesive application, including type, make and model; maximum design process rate or throughput; all emission control unit information as described in subdivision (e) of this section, as applicable, and a description of the coating/solvent application/drying method(s) employed;

(3) a monthly log of the consumption of each solvent (including solvents used in clean up and surface preparation), coating, ink, sealant and adhesive used and calculations showing compliance with the emission limits required by subdivision (a) of this section, as applicable. For the purpose of complying with this Subpart, all VOCs and HAPs consumed during the application of coatings, solvents, inks, sealants and adhesives are to be considered as being emitted to the atmosphere; and

(4) all purchase orders, invoices, and other documents to support the information in the monthly log.

(h) The owner or operator of a facility with general process, exhaust, or ventilation systems that are subject to this Section, but do not fit the classifications described in subdivision (f) or (g) of this section, must keep and maintain the following records:

(1) information on the process and equipment including the following: equipment type, description, make and model; maximum design process rate or throughput, all emission control unit information as described in subdivision (e) of this section, as applicable;

(2) a monthly log of operating hours, each raw material used and its amount, each product produced and its production rate;

(3) purchase orders, invoices, and other documents to support information in the monthly log; and

(4) any additional information as requested by the department.

(i) The owner or operator of any facility subject to this section must apply for and obtain all necessary



approvals prior to commencing any physical or operational change which will result in an increase in actual emissions above the emission limitations in subdivision (a) of this section. The facility will remain subject to all applicable requirements until a new emission cap is established in accordance with section 201-7.1 of this Part.

(j) A responsible official must verify annually through a review of required records and totaling of emissions information that the facility is eligible for regulation by this section and has operated in accordance with all requirements of this section. A record of this verification must be kept on-site for inspection by the department for five years, along with the emission estimates and their basis, showing compliance with this section. In any situation where the provisions of this section have not been or are not expected to be met, the facility owner or operator shall notify the department.

[(1)] (k) If the owner or operator of the facility cannot demonstrate, through the use of the limitations and requirements described in this section, that the facility-wide emission totals for any 12-month period are below the emission limits as specified in subdivision (a) of this section, the facility must demonstrate compliance with all applicable requirements the facility avoided pursuant to the provisions of this section.

SUBPART 201-5  
STATE FACILITY PERMITS

Section 201-5.1 Applicability.

(a) Except when required to obtain a title V facility permit pursuant to Subpart 201-6 of this Part, owners or operators of facilities with emission sources that are not [considered to be] exempt or trivial pursuant to Subpart 201-3 of this Part[, or that cannot register pursuant to Subpart 201-4 of this Part,] are subject to the requirements of this Subpart if:

(1) the facility's potential to emit is being capped pursuant to section 201-7.1 of this Part to avoid the requirement to obtain a title V permit or other applicable requirement;

(2) the facility is subject to any department approved variance from the requirements of this Chapter;

(3) the facility has annual actual emissions of one or more [persistent, bioaccumulative or toxic compounds] high toxicity air contaminants greater than or equal to the thresholds listed in table 1 of Subpart 201-9 of this Part, [, except where the facility is a] The facility's annual actual emissions of high toxicity air contaminants do not include emissions from stationary or portable combustion installations or activities considered to be exempt or trivial, as described in Subpart 201-3 of this Part; or

(4) the facility has annual actual emissions of any regulated air contaminant in excess of the thresholds listed in section 201-4.5(a) of this Part.

(b) [State facility permits shall authorize both construction and operation of one or more emission sources under a single permit. No person shall construct a new emission source described under subdivision (a) of this

section without a State facility permit, or construct new emission sources or modify existing emission sources without a permit modification unless the changes are allowed under section 201-5.4 of this Subpart.] Where the activity requiring a State facility permit is associated with the construction of a new facility or emission source, or modification of an existing facility or emission source, the owner or operator of the facility or emission source may not commence construction or modification until a new or modified State facility permit is issued by the department.

(c) Notwithstanding the requirements of Subdivision (a) of this Section, the owner or operator of a facility subject to the requirements of this Subpart may apply for a minor facility registration, as described in Subpart 201-4 of this Part, if permitted to do so by another applicable regulation under this Chapter.

#### Section 201-5.2 Application content.

(a) All State facility permit applications submitted to the department shall be signed by a responsible official and provided in a format acceptable to the department.

(b) State facility permit applications must include the following information:

(1) identifying information, including owner name and address, facility name and address, responsible official name and address;

(2) a location map with the site marked on it if the application is for a new facility;

(3) a list and description of all emission sources at the facility except those that are listed as exempt or trivial in Subpart 201-3 of this Part;

(4) a listing of the Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) codes which correspond to the primary operations carried out at the facility;

(5) a description of all processes, their associated emission sources and products;

(6) a list of all emission points including the following parameters: stack height (ft), stack height above building (ft), internal stack diameter (in), exit temperature (degrees F), exit velocity (ft/sec), exit flow (acfm), distance from [emission] the emission point to the property line (ft) and NYTM coordinates;

(7) a process flow diagram detailing which process emissions and emission sources exhaust from which emission point;

(8) a list including the type, rate and quantity of all regulated air pollutant emissions and [persistent, bioaccumulative and toxic compound] high toxicity air contaminant emissions, as listed in Subpart 201-9 of this Part, in sufficient detail for the department to determine those State and Federal requirements that are applicable to the facility;

(9) a list of all State and Federal air pollution control requirements applicable to the facility; and

(10) any other information requested by the department.

(c) Renewal applications for State facility permits must be submitted to the department at least 180 days, but not more than 18 months, prior to the date of permit expiration. While the renewal application is being processed by the department, the owner or operator of the facility may continue to operate that facility under the terms and conditions of the existing permit, provided the application is submitted in accordance with this

Subdivision.

(d) State facility permit renewal applications for facilities that have accepted an emissions cap pursuant to Subpart 201-7 of this Part are subject to the public noticing procedures for new State facility permits described in Part 621 of this Title.

#### Section 201-5.3 Permit content and terms of issuance.

(a) New and modified State facility permits will be issued for a period not to exceed 10 years.

(b) Facility owners or operators holding an existing State facility permit issued [prior to the effective date of this Subpart] without an expiration date must submit an updated State facility permit application, as described in this Subpart, to the department within 90 days of receiving written notification from the department.

(c) Permits may contain such conditions as the department shall require to [insure] ensure compliance with the provisions of this Title, to identify applicable Federal standards, recordkeeping and reporting requirements and ensure that operation of the facility will not prevent attainment or maintenance of one or more rational ambient air quality standards.

#### Section 201-5.4 Permit modifications

(Existing Section 201-5.4 is repealed. A new Section 201-5.4 is added as follows:)

(a) The owner or operator of a facility subject to this Subpart must submit an application for permit modification, as described in Section 201-5.2 of this Subpart, prior to commencing construction of either a significant modification as described in Subdivision (b) of this Section, or a minor modification as described in Subdivision (c) of this Section.

(b) 'Significant Permit Modifications'.

(1) The following changes to existing facilities are considered significant modifications:

(i) Changes that cause the facility to become subject to a new applicable requirement;

(ii) Changes that result in less stringent monitoring, record keeping, or reporting requirements;

(iii) Changes that seek to establish or change a case-by-case determination or department approved variance;

(iv) Changes that seek to establish or change a federally enforceable emissions cap or a permit term or condition that the facility has accepted to avoid an applicable requirement to which the facility would otherwise be subject; and

(v) Changes that are modifications under any provision of Title I of the Act that result in an emissions increase in excess of the NSR major facility thresholds contained in Subpart 231-13 of this Title.

(2) Applications for significant permit modifications are subject to the public noticing requirements for new applications pursuant to the requirements of Part 621 of this Title. The modified permit must be issued before the facility owner or operator may commence construction or operation of the requested modification.

(c) 'Minor Permit Modifications'.

(1) A minor modification is any change at an existing facility that meets the definition of modification at Part 200.1(aq) of this Title and is not a significant modification as described in Subdivision (b) of this Section.

(2) The department will review and act on applications for minor permit modifications in accordance with the requirements for minor projects under Part 621 of this Title.

(3) The facility owner or operator may proceed with the requested minor modification upon receipt of a notice of complete application from the department confirming that the modification is minor. If the department fails to make a completeness determination, the application shall be deemed complete by default on the 15th day after receipt of the application and the facility owner or operator may proceed with the requested modification on the 25th day after the date that the department received the application. After the facility owner or operator makes the change and until the department takes final action, or notifies the facility owner or operator that the requested modification does not meet the minor modification criteria, the facility owner or operator must comply with both the applicable requirements governing the change and any proposed permit terms and conditions contained in the application. During this time period, the facility owner or operator need not comply with the existing permit terms and conditions for which a modification is proposed. However, if the facility owner or operator fails to comply with the proposed permit terms and conditions during this time period, the existing permit terms and conditions for which a modification is proposed may be enforced against it.

(d) 'Advance Notifications'. The owner or operator of a facility subject to the requirements of this Section may make changes that meet all of the criteria in paragraphs (1) through (4) of this subdivision without the prior approval of the department. The owner or operator of the facility must notify the department in writing at least 15 days in advance of making each such change, as described in subdivision (e) of this section.

(1) The change is not a significant modification as described in subdivision (a) of this section;

(2) The change does not cause facility emissions to exceed any emission limitation or other condition in the facility's permit or result in emissions of a regulated contaminant not previously emitted or authorized under a permit;

(3) The change does not cause the facility to become subject to any additional applicable requirements or regulations under this Title; and

(4) The change does not seek to establish or change a federally-enforceable emission cap or limit, or the monitoring, record keeping, or reporting requirement associated with the emission cap or limit.

(e) Advance notifications required by subdivision (d) of this section shall include the following information:

(1) identification of the emission unit(s), process(es), emission source(s), and emission point(s) affected by the proposed change;

(2) date on which the change is to occur;

(3) description of the proposed change;

(4) if appropriate, the identification and description of emissions control technology and compliance terms; and



(5) the identification of all contaminants emitted by the affected emission sources and calculations of the emission rate potential, potential to emit, and projected actual annual emission rates after the proposed change.

(f) The owner or operator of a facility which has made a change pursuant to subdivision (d) of this section must maintain a record of the date and description of each such change at the facility, and shall include each change in the facility's next permit renewal or modification application. These records shall be maintained at the facility until the changes are incorporated into the facility's permit and must be made available for review by department representatives upon request.

(g) The department may require a permit modification to impose applicable requirements or permit conditions if it determines that changes proposed pursuant to the advance notification requirements of subdivision (d) of this section do not meet the established criteria, or that the changes may have a significant air quality impact. In such cases, the department shall require that the facility owner or operator not undertake the proposed changes until a permit modification is issued. The department's determination shall include a listing of any additional information necessary to complete its review of the proposed changes.

SUBPART 201-6  
TITLE V FACILITY PERMITS

Section 201-6.1 Applicability.

(a) Except as otherwise set forth herein, no person shall construct or operate any of the following facilities without first obtaining a title V permit.

(1) Any major facility, as defined under Subpart 201-2 of this Part.

(2) Any facility specifically required to obtain a title V permit by being subject to a standard, limitation, or other requirement under the Federal New Source Performance Standards (NSPS) in 40 CFR part 60, *et seq.*

(3) Any facility, including an area source, subject to a standard or other requirement regulating hazardous air pollutants under federal National Emission Standards for Hazardous Air Pollutants (NESHAP) in 40 CFR parts 61 and 63 that is specifically required to obtain a title V permit by the administrator of the act. A facility is not required to obtain a title V permit solely because it is subject to regulations or requirements promulgated for the control of accidental releases of substances regulated under section 112(r) of the act.

(4) Any affected source as defined in Subpart 201-2 of this Part.

(5) Any facility in a category designated by the administrator and added by the department pursuant to rulemaking.

(b) The following facilities are deferred or exempt from the requirement to obtain a title V facility permit under this section but may be subject to the requirements of [Subpart] Subparts 201-4 or 201-5 of this Part.

(1) Facilities that are not major facilities, affected sources, solid waste incineration units required to obtain a permit pursuant to section 129 of the act, and facilities subject to a Federal New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants promulgated prior to July 21, 1992 are exempted from the requirement to obtain a title V facility permit under this section.

(2) The administrator will determine whether to exempt or defer any or all non-major facilities subject to a Federal New Source Performance Standard or National Emission Standard for Hazardous Air Pollutants promulgated after July 21, 1992 from the requirement to obtain a title V facility permit at the time a new standard is promulgated. Facilities that qualify for permit deferrals shall not be required to apply for a title V facility permit until the administrator promulgates standards specifying a due date for applications and these standards are adopted by the department pursuant to rulemaking.

(3) The following facility categories are exempt from the obligation to obtain a title V facility permit under this section:

(i) all facilities that would be required to obtain a permit solely because they are subject to 40 CFR part 60, subpart AAA - Standards of Performance for New Residential Wood Heaters;

(ii) all facilities that would be required to obtain a title V facility permit solely because they are subject to a standard listed in Subpart 201-6.7 of this Part;

(iii) all facilities that would be required to obtain a permit under this section solely because they are subject to 40 CFR part 61, subpart M - National Emission Standard for Hazardous Air Pollutants for Asbestos, section 61.145, Standards for Demolition and Renovation; and

(iv) facilities that have accepted federally enforceable emission caps pursuant to Subparts 201-4 or 201-7 of this Part that restrict a facility's emissions to a level that is below the applicability threshold for having to obtain a title V facility permit.

(c) Any facility not required to obtain a permit pursuant to subdivision (a) of this section may opt to apply for a title V facility permit.

(d) A single title V facility permit will be issued for a facility with multiple emission sources, except upon request from an owner or operator for more than one permit. In no case shall the determination of whether a facility is subject to the requirement to obtain an operating permit according to this section be affected by the application for, or issuance of, more than one title V facility permit.

#### Section 201-6.2 Permit Applications.

(a) 'Timely application'. The owner or operator of a facility subject to this Subpart shall submit a complete application, as defined in Part 621 of this Title and this Subpart, for initial issuance of a title V permit, or renewal, in accordance with the timeframes established under paragraphs (1) through (6) of this subdivision:

(1) Prior to the commencement of construction of a new facility subject to permitting under this Subpart.

(2) Prior to the commencement of [operation] construction of new emission unit(s) or modified emission units at an existing facility that makes the facility subject to title V permitting. The owner or

operator of a facility subject to this provision may choose to apply for a State facility permit pursuant to section 201-5.2 of this Part. Upon issuance, that permit shall authorize both construction and operation of the new or modified emission units until a title V permit is issued in accordance with this Subpart. An application for a title V permit is required within one year of the commencement of operation of the new or modified emission unit(s).

(3) Prior to the commencement of construction of a new emission unit at an existing title V facility. The owner or operator of an existing title V facility, which is being modified by the addition of a new emission unit comprised solely of new emission sources, may apply for a State facility permit pursuant to section 201-5.2 of this Part that will authorize construction and operation of the new emission unit upon issuance. [A] An application for a title V permit modification is required within one year of the commencement of operation of the new emission unit.

(4) At least 180 days, but not more than eighteen months, prior to the date of permit expiration for permit renewal purposes.

(5) For existing facilities required to meet the requirements under section 112(g) of the act, prior to construction.

(6) For existing facilities with any emission source designated by EPA as requiring a title V facility permit, within 12 months after the effective date of EPA's designation, or by a later deadline specified by EPA in its designation.

(b) 'Completeness determinations'. (1) Applications submitted for title V facility permits must be reviewed for completeness by the department in accordance with subdivision (d) of this section and Part 621 of this Title.

(2) Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the applicant shall provide additional information as necessary to address any requirements that become applicable to the facility after the date it filed a complete application but prior to release of a draft permit.

(3) If a facility owner or operator submits a timely and complete application for title V permit issuance and/or renewal, the failure to have a title V facility permit is not a violation of this Part because the department has not taken final action on the permit application, except as noted in this section. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by a reasonable deadline specified in writing by the department, any additional information identified as being needed to review and act on the application. The department will reinstate this protection upon receipt of the additional information in the event that an applicant is unable to provide it within the specified timeframe.

(c) ‘Final decisions’. The department shall act on title V facility permit applications in accordance with the timeframes and procedures established in Part 621 of this Title. Failure to act on new title V facility permit applications within 18 months of receipt of a complete application shall be grounds for judicial review in State court.

(d) ‘Application Content’. All title V facility permit applications submitted to the department shall be signed by a responsible official and provided in a format acceptable to the department. Title V facility permit applications must include the following information at a minimum:

(1) Identifying information, including company name and address (or facility name and address if different from the company name), owner's name and representative, and telephone number and names of the facility manager/contact.

(2) A description of the facility's processes and products (by Standard Industrial Classification or North American Industry Classification System code) including any associated with each alternate operating scenario identified by the owner or operator.

(3) The following emissions-related information:

(i) All emissions of pollutants for which the facility is major, all emissions of regulated air pollutants, and all emissions of [persistent, bioaccumulative and toxic compounds] high toxicity air contaminants listed in Table 1 of Subpart 201-9 of this Part. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit, emission point and process, except where such units are listed as exempt or trivial under Subpart 201-3 of this Part. The applicant shall submit additional information related to the emissions of regulated air pollutants sufficient to verify which Federal requirements are applicable to the facility.

(ii) Fugitive emissions from a major facility shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the definition of major facility. Source categories that must include fugitive emissions in the applicability determination for title V facility permits are identified within the definition of major facility.

(iii) Identification and description of all emission units described in the above paragraphs in sufficient detail to establish the applicability of Federal requirements.

(iv) Emissions rates of all regulated air pollutants in such terms as are necessary to establish compliance consistent with the applicable standard reference test method.

(v) The following information to the extent it is needed to determine or regulate emissions in accordance with applicable requirements: Fuel types and their usage, raw materials, production rates, and operating schedules.

(vi) Identification and description of air pollution control equipment and compliance monitoring devices or activities required under the Clean Air Act.

(vii) Enforceable limitations on facility operation restricting emissions, including federally enforceable emission caps, or any work practice standards, where applicable, for all regulated air pollutants.

(viii) Other information required by any applicable requirement.

(ix) Sample or actual calculations on which the information in subparagraphs (i) through (viii) of this paragraph is based.

(x) A process flow diagram detailing which process emissions and emission sources exhaust from which emission point.

(xi) A description of each emission point associated with each emission unit that includes the following parameters: stack height (ft), stack height above building (ft), inside stack diameter (in), exit temperature (degrees F), exit velocity (ft/sec), exit flow (acfm), distance from the emission point to the



property line (ft) and NYTM coordinates.

(4) The following air pollution control requirements:

(i) Citation and description of all applicable requirements.

(ii) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

(5) Other specific information that may be necessary to implement and enforce other requirements of the act or to determine the applicability of such requirements.

(6) An explanation of any proposed exemptions from otherwise applicable Federal requirements and a description of any proposed exempt activities and/or emission units.

(7) Information necessary to define operational flexibility proposed in accordance with section 201-6.4 of this Subpart.

(8) A compliance plan for all emission source activities subject to applicable requirements that contains the following:

(i) A description of the compliance status of the emission source activity with respect to all applicable requirements.

(ii) A description of applicable requirements as follows:

(‘a’) For applicable requirements with which the facility is in compliance, a statement that the facility will continue to comply with such requirements.

(‘b’) For applicable requirements that will become effective during the permit term, a statement that the facility will meet such requirements on a timely basis.

(‘c’) For applicable requirements for which the facility is not in compliance at the time of permit issuance, a narrative description of how the facility will achieve compliance with such requirements.

(iii) A compliance schedule as follows:

(‘a’) For applicable requirements that will become effective during the permit term, a statement that the facility will meet such requirements on a timely basis, consistent with section 201-6.4 (a)(1)(i)-(iii) of this Subpart. A statement that the facility will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

(‘b’) A schedule of compliance for facilities that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the facility will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject. Any such schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable

requirements or standards on which it is based.

(iv) A schedule for submission of certified progress reports no less frequently than every six months for facilities required to have a schedule of compliance to remedy a violation.

(v) The compliance plan content requirements specified in this paragraph shall apply and be included in the acid rain portion of a compliance plan, as defined in 40 CFR part 72, for an 'affected source', except as specifically superseded by regulations promulgated under the acid rain program with regard to the schedule and method(s) the 'affected source' will use to achieve compliance with the acid rain emissions limitations.

(9) Requirements for compliance certification, including the following:

(i) A certification of compliance with all applicable requirements signed by a responsible official consistent with this section.

(ii) An identification of methods used for determining compliance, including a description of monitoring, recordkeeping, and reporting requirements and test methods.

(iii) A schedule for submission of compliance certifications during the permit term, to be submitted no less frequently than annually, or more frequently if specified by the underlying applicable requirement or by the department in the permit.

(iv) A statement indicating the facility's compliance status with applicable compliance assurance monitoring and compliance certification requirements of the act.

(10) 'Reserved'.

(11) The use of nationally standardized forms for acid rain portions of permit applications and compliance plans, as required by title IV of the act.

(12) Certification by a responsible official. Any application form, report, or compliance certification submitted pursuant to the Federal title V permitting requirements under this Subpart shall contain certification of truth, accuracy, and completeness by a responsible official. This certification and any other certification required under this Subpart shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

(e) 'Confidentiality'. A responsible official can request that certain information in a title V facility permit application be kept from public disclosure if it can be demonstrated to the department that the information is a trade secret. Such requests must be made in accordance with Part 616 of this Title. Information submitted to the department pursuant to Part 616 of this Title may be submitted directly to the administrator by the facility owner to determine if it is confidential pursuant to 40 CFR part 2.

(f) Applications for title V facility permit modifications and revisions generally need only supply information related to the modification or revision, provided such information includes a complete set of data on any emission units affected by the modification or revision and any facility level information required in forms developed by the department to properly ascertain the nature and extent of a modification.

(g) The facility owner or operator may not omit information from an application that is needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the permit fee amount required by

the department.

(h) The facility owner or operator may also elect to accept an emission cap in accordance with Subparts 201-4 and 201-7 of this Part in order to avoid the title V facility permit requirements of this Subpart.

#### Section 201-6.3 Application and permit review by EPA and affected states.

(a) 'Transmission of information to the administrator'. (1) The department shall provide the administrator a copy of each title V permit application, including any application for permit modification, each proposed permit, and each final title V facility permit. Accessibility to the administrator of the application, proposed permit, or final permit on the department's computer system shall be considered equivalent to the submission of these documents to the administrator by the department. The applicant may be required by the department to provide a copy of the permit application (including the compliance plan) directly to the administrator. To the extent practicable, the preceding information shall be provided in computer-readable format compatible with the EPA national database management system.

(2) The administrator may waive the requirements of paragraph (1) of this subdivision and paragraph (b)(1) of this section for any category of emission sources (including any class, type, or size within such category) other than major facilities according to the following:

(i) by regulation for a category of emission sources nationwide; or

(ii) at the time of approval of the State program for a category of facilities covered by an individual permitting program.

(3) The department shall keep such records for five years and submit to the administrator such

information as the administrator may reasonably require to ascertain whether the State program complies with the requirements of the act or of 40 CFR part 70.

(b) 'Review by affected states'. (1) The department shall give notice of each draft permit to any affected state on or before the time that the department provides this notice to the public under the requirements of this Part or Part 621 of this Title.

(2) The department, as part of the submittal of the proposed permit to the administrator (or as soon as possible after the submittal for minor permit modification procedures allowed under section 201-6.6 of this Subpart), shall notify the administrator and affected states in writing of any refusal by the department to accept all recommendations for the proposed permit that the affected state submitted during the public or affected state review period. The notice shall include the department's reasons for not accepting any such recommendation. The department is not required to accept recommendations that are not based on applicable requirements or the requirements of this Part.

(3) Within five working days of receipt of a complete permit modification application, the department shall meet its obligation to notify the administrator and affected states of the requested permit modification. The department promptly shall send any required notice to the administrator.

(c) 'EPA objection'. (1) The administrator may object to the issuance of any proposed permit determined by the administrator not to be in compliance with applicable requirements or requirements under this Part. No permit for which an application must be transmitted to the administrator shall be issued if the administrator objects to its issuance in writing within 45 days of receipt of the proposed permit and all necessary supporting information.

(2) Any EPA objection shall include a statement of the administrator's reasons for objection and a description of the terms and conditions that the permit must include to respond to the objections. The administrator will provide the permit applicant a copy of the objection.

(3) Failure of the department to do any of the following also shall constitute grounds for an objection:

(i) comply with subdivisions (a) or (b) of this section;

(ii) submit any information necessary to review adequately the proposed permit; or

(iii) process the permit under the procedures approved to meet the public participation requirements of Part 621 of this Title except for minor permit modifications.

(4) If the department fails to revise and submit a proposed permit in response to an objection within 90 days of the objection, the administrator may issue or deny the permit in accordance with the requirements of the Federal program promulgated under title V of the act.

(d) 'Public petitions to the administrator'. If the administrator does not object in writing under subdivision (c) of this section, any person may petition the administrator within 60 days after the expiration of the administrator's 45-day review period to make such objection. Any such petition shall be based only on objections to the permit that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates that it was impracticable to raise such objections within such period, or unless the grounds for such objection arose after such period. If the administrator objects to the permit as a result of a petition filed under this paragraph, the department shall not issue the permit until EPA's objection has been resolved, except that a petition for review does not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day review period and prior to an EPA objection. If the department has

issued a permit prior to receipt of an EPA objection under this paragraph, the administrator will modify, terminate, or revoke such permit, and shall do so consistent with the procedures in section 201-6.6(e) of this Subpart, except in unusual circumstances, and the department may thereafter issue only a [revised] modified permit that satisfies EPA's objection. In any case, the facility owner and/or operator will not be in violation of the requirement to have submitted a timely and complete application.

#### Section 201-6.4 Standard permit requirements.

(a) 'General conditions'. With the exception of subdivision (f) of this section the provisions contained in this Subpart are considered standard solely for the Federal portion of the title V facility permit. The operational flexibility provisions under subdivision (f) of this section shall be available under both State and Federal portions of the title V facility permit. Each title V facility permit issued under this Part shall include the following standard provisions:

(1) All Federal emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of permit issuance.

(i) The origin of and authority for each term or condition, and any difference in form as compared to the applicable requirement upon which the term or condition is based.

(ii) Any permit containing the department's determination that an alternative emission limit constitutes compliance with a regulation in the State implementation plan shall contain provisions to ensure that the resulting emission limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures. The department's determination that an emission source is eligible for an alternative emission limit can be made in the permit issuance, renewal or significant modification process. Permits may only include alternative emission limits if provided for in the State implementation plan and if the alternative emission limit is determined by the department to be



equivalent to the limit in the State implementation plan.

(iii) If an existing facility has installed best available control technology (as defined in section 169[3] of the act), or technology required to meet a lowest achievable emission rate (as defined in section 171[3] of the act), prior to the promulgation of an applicable MACT or GACT standard to such stationary source, per section 112(d) and (j) of the act, for the same hazardous air pollutant (or stream of hazardous air pollutants) it shall not be required to comply with such standard until the date five years after the date on which installation or reduction has been achieved, as determined by the department.

(2) The permittee must comply with all conditions of the title V facility permit. Any permit non-compliance constitutes a violation of the act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

(3) The permit may be modified, revoked, suspended, reopened and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(4) The owner or operator shall furnish to the department, within a reasonable time, any information that the department may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the department copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee may furnish such records directly to the administrator along with a claim of confidentiality, if the administrator initiated the request for information or otherwise has need of it.

(5) It is not a defense for an owner or operator in an enforcement action to claim that it would have been

necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

(6) The permit does not convey any property rights of any sort, or any exclusive privilege.

(7) The owner or operator of a facility shall pay fees to the department consistent with the fee schedule authorized by Subpart 482-2 of this Title.

(8) The department or an authorized representative shall be allowed upon presentation of credentials and other documents as may be required by law to:

(i) enter upon the permittee's premises where a facility subject to the permitting requirements of this Subpart is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(ii) have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(iii) inspect at reasonable times any emission sources, equipment (including monitoring and air pollution control equipment), practices, and operations regulated or required under the permit; and

(iv) sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

(9) A severability clause to insure the continued validity of the remaining various permit requirements

in the event of a challenge to any portions of the permit.

(b) ‘Permit conditions for monitoring’. Each title V facility permit issued under this Part shall include the following provisions pertaining to monitoring:

(1) all emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods for compliance assurance monitoring as required by the act shall be specified in the permit;

(2) where the applicable requirement does not require periodic testing or instrumental or non-instrumental monitoring (which may consist of recordkeeping designed to serve as monitoring), the permit shall specify the periodic monitoring sufficient to yield reliable data from the relevant time periods that are representative of the major facility’s compliance with the permit. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirements; and

(3) as necessary, requirements concerning the use, maintenance, and installation of monitoring equipment or methods.

(c) ‘Permit conditions for recordkeeping and reporting of compliance monitoring’. (1) The following information must be included in records and reports:

(i) the date, place as defined in the permit, and time of any required sampling or measurements;

(ii) the date(s) any required analyses were performed;

(iii) the company or entity that performed any required analyses;

(iv) the analytical techniques or methods used including quality assurance and quality control procedures if required;

(v) the results of such analyses including quality assurance data where required;

(vi) the operating conditions as existing at the time of any required sampling or measurement;

(vii) any deviation from permit requirements must be clearly identified; and

(viii) reports must be certified by a responsible official, consistent with section 201-6.2 of this Subpart.

(2) Records of all monitoring data and supporting information must be retained for a period of at least five years from the date of the monitoring, sampling, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, all quality assurance information and copies of all reports required by the permit.

(3) The permit shall incorporate all applicable Federal reporting requirements which must include the following:

(i) electronic submittal of reports of any required monitoring in a format acceptable to the department at least every six months; and

(ii) notification and reporting of permit deviations and incidences of noncompliance stating the probable cause of such deviations, and any corrective actions or preventive measures taken. If the permittee seeks to have a violation excused as provided in section 201-1.4 of this Part, the permittee shall report such violations as required under section 201-1.4(c) of this Part. In order to have a violation of a Federal regulation (such as a new source performance standard or national emissions standard for hazardous air pollutants) excused, the specific Federal regulation must provide for an affirmative defense during start- up, shutdowns, or malfunctions [or upsets]. All other permit deviations shall only be reported as required under subparagraph (i) of this paragraph, unless the department specifies a different reporting requirement within the permit.

(d) ‘Compliance schedules’. Each title V facility permit issued shall contain the following provisions for compliance:

(1) The permit shall include a provision requiring compliance with the schedule proposed pursuant to section 201-6.2 of this Subpart.

(2) Where any performance or emission standard or other requirement is established for a facility prior to the issuance of a permit, the permit may contain a compliance schedule requiring the facility to achieve compliance as soon as practicable but not later than the time required by the act or an applicable requirement.

(3) Any document (including reports) required by a title V permit shall contain a certification by a responsible official as set forth in section 201-6.2 of this Subpart that based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate and

complete.

(4) Progress reports consistent with an applicable schedule of compliance and are to be submitted at least semiannually, or at a more frequent period if specified in the applicable requirement or by the department. Such progress reports shall contain the following:

(i) dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(ii) an explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(e) 'Compliance certification'. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(1) the frequency, not less than annually or more frequent periods as specified in the applicable requirement or by the department, of the electronic submissions of compliance certifications;

(2) a means for assessing or monitoring the compliance of the facility with its emission limitations, standards, and work practices;

(3) a requirement that the compliance certification include the following:

(i) the identification of each term or condition of the permit that is the basis of the certification;

(ii) the compliance status;

(iii) whether compliance was continuous or intermittent;

(iv) the method(s) used for determining the compliance status of the facility, currently and over the reporting period consistent with subdivision (b) of this section;

(v) such other facts as the department shall require to determine the compliance status of the facility; and

(vi) all compliance certifications shall be submitted to the department and to the administrator and shall contain such other provisions as the department may require to ensure compliance with all applicable requirements.

Existing Subdivision 201-6.4(f) is deleted. A new Subdivision 201-6.4(f) is added as follows:

(f) ‘Operational Flexibility’. Each Title V permit shall contain a provision stating that no permit modifications will be required for changes that are provided for in the permit. Such changes may be made without a permit modification if the changes are not modifications under any provision of Title I of the Act and do not exceed, or cause the facility to exceed, an emissions cap or limitation in the permit. Any compliance certifications, record keeping, or reporting required by the Title V facility permit must incorporate and consider any approved changes made pursuant to this Subdivision.

(1) Alternate operating scenarios. The owner or operator of a major facility may apply for a range of

conditions to allow for the flexibility to operate under more than one operating scenario. The facility owner or operator shall identify each proposed alternate operating scenario in the Title V facility permit application, as described in Subpart 201-6.2 of this Part. Each proposed alternate operating scenario shall be described in sufficient detail to allow the department to assess the control requirements, determine compliance with applicable requirements, and maintain the department's source inventory. Each approved alternate operating scenario shall be included in the Title V facility permit. Upon issuance of the permit, operation under each proposed alternate operating scenario is authorized without a permit modification. The facility owner or operator must record the duration of operation under each operating scenario in a log at the facility and note any changes from one operating scenario to another. Operational records kept pursuant to this paragraph shall be maintained at the facility for a period of at least five years.

(2) 'Protocol'. (i) The owner or operator of a major facility may develop and propose, as part of the Title V facility permit application, a protocol to allow for future physical or operational changes to be made without the need for a permit modification. Each protocol must include provisions for evaluating potential changes for compliance with the following criteria:

('a') all applicable requirements with which the new or changed operation or emission source must comply must already exist in the facility's Title V permit; and

('b') the change is not part of a project that results in a significant net emissions increase as described in Part 231 of this Title.

(ii) Each approved protocol shall be included in the Title V facility permit. Upon issuance of the permit, the facility owner or operator is authorized to make any changes pursuant to the approved protocol without the need for a permit modification provided that the facility owner or operator supplies



the department with written notification as required by Paragraph (3) of this Subdivision at least fifteen days in advance of making the proposed changes.

(3) 'Notifications'. The facility owner or operator must notify the department in writing at least fifteen days in advance of making any change pursuant to Paragraph (2) of this Subdivision. The department shall respond in writing with a determination within 15 days of receipt of the notification. Notifications made pursuant to this paragraph shall contain the following information:

(i) Identification of the emission unit, process(es), emission source(s), and emission point(s) affected by the proposed change with any applicable revisions to the emission unit structure;

(ii) Description of the proposed change, including the operating parameters affected;

(iii) Identification and description of any emission control device or technology that will be used;  
and

(iv) Documentation of the proposed change's compliance with respect to all applicable requirements, including the following:

('a') Calculations demonstrating the emission rate potential and maximum projected annual actual emission rates for all contaminants affected by the change;

('b') Documentation demonstrating that the change is not subject to the New Source Review requirements of Part 231 of this Title;

('c') Identification and evaluation of all state and federal regulations applicable to the proposed change;

(‘d’) Any additional operating and record keeping procedures necessary to ensure compliance with all applicable requirements; and

(‘e’) Any other relevant information used for the evaluation of the proposed change under the protocol.

(4) The department reserves the right to require a permit modification to impose applicable requirements or permit conditions if it determines that changes proposed pursuant to Paragraph (2) of this Subdivision do not meet the criteria described in Paragraph (2) of this Subdivision, or that the changes may have a significant air quality impact. In such cases, the department shall require that the facility owner or operator not undertake the proposed changes until a permit modification is issued. The department’s determination shall include a listing of any additional information necessary to complete its review of the proposed changes.

(5) Changes made pursuant to the provisions of this Subdivision are not subject to the permit shield described in Section 201-6.4(g) of this Subpart until they are incorporated into the facility’s Title V facility permit.

(6) ‘Reserved’.

(g) ‘Permit shield’. (1) Except as otherwise provided in this Subpart, the department shall include a provision in the title V permit stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance. This permit shield applies provided the applicable requirements are included and are specifically identified in the permit or the department, in acting on the permit application or [revision] modification, determines in writing that other requirements specifically identified are not applicable to the major facility, and the permit includes the

determination or a concise summary thereof.

(2) Nothing herein shall preclude the department from [revising] modifying or revoking the permit pursuant to Part 621 of this Title or from exercising its summary abatement authority, or alter or affect the following:

(i) the ability of the department to seek to bring suit on behalf of the State of New York, or the administrator to seek to bring suit on behalf of the United States, to immediately restrain any person causing or contributing to pollution presenting an imminent and substantial endangerment to public health, welfare or the environment to stop the emission of air pollutants causing or contributing to such pollution;

(ii) the liability of an owner or operator of a title V facility for any violation of applicable requirements prior to or at the time of permit issuance;

(iii) the applicable requirements of title IV of the act; or

(iv) the ability of the administrator to obtain information from a facility owner or operator concerning the ability to enter, inspect and monitor the facility.

(h) 'Term of permits'. The following time periods shall apply to the term of title V facility permits:

(1) Periods of up to five years for title V facility permits and general permits for facilities subject to this Subpart.

(2) A fixed term of five years for "affected sources." Title V permits for "affected sources" will be

issued in such a manner as to eliminate inconsistencies between the expiration of the title V permit and the effective dates of applicable requirements under title IV of the act.

(i) ‘Reopening for cause’. (1) A title V permit shall be reopened and [revised] modified under any of the following circumstances:

(i) When additional applicable requirements under the act become applicable to a title V facility with a remaining permit term of three or more years, a reopening shall be completed not later than 18 months after promulgation of the applicable requirement. No such reopening is required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions has been extended by the department pursuant to the provisions of section 201- 6.6 of this Subpart.

(ii) The department or the administrator determines that the permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the permit.

(iii) The department or the administrator determines that the title V permit must be [revised] modified or reopened to assure compliance with applicable requirements.

(iv) Additional requirements (including excess emissions requirements) become applicable to an “affected source” under the Acid Rain Program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

(2) Proceedings to reopen and issue a title V facility permit shall be required to follow the same

procedures as apply to initial permit issuance but shall affect only those parts of the permit for which cause to reopen exists.

(3) Reopenings shall not be initiated before a notice of such intent is provided to the facility by the department at least 30 days in advance of the date that the permit is to be reopened, except that the department may provide a shorter time period in the case of an emergency.

#### Section 201-6.5 Special provisions.

(a) ‘State enforceable requirements’. The department shall specifically designate as not being federally enforceable, any terms and conditions included in the permit that are not required under the act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of section 201- 6.3 of this Subpart.

(b) ‘Additional permit conditions for facilities subject to the Acid Rain Program of title IV of the act’.

(1) Where an applicable requirement of the act is more stringent than regulations promulgated under title IV of the act, both requirements shall be incorporated into the permit, and shall be enforceable by the department and the administrator.

(2) Emissions exceeding any allowances that the facility owner/operator lawfully holds under title IV of the act or the regulations promulgated thereunder shall be prohibited by the permit. However, the facility owner or operator is not required to cover its emissions at all times. Rather, the facility owner or operator need only have sufficient sulfur dioxide allowances to cover emissions at the end of the true-up period in each year.

(3) No permit [revision] modification shall be required for increases in emissions that are authorized by

allowances acquired pursuant to title IV, provided that such increases do not require a permit [revision] modification under any other applicable requirement.

(4) No limit shall be placed on the number of allowances held by the facility. The facility owner or operator may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

(5) Any allowance shall be accounted for according to the procedures established in regulations promulgated under the acid rain provisions of title IV.

(c) 'Emergency defense provision'. Each title V facility permit shall contain a condition that requires reporting of noncompliance due to an emergency as described in Section 201-1.5 of this Part. [In the event that emissions of contaminants in excess of any emission standard of this Chapter occur due to an emergency (as defined in this Part), the facility owner or operator shall report such event to the department's representative as soon as possible during normal working hours, but in any case not later than two working days after the event occurs. The report must describe the emergency, any steps taken to mitigate emissions, and corrective actions taken. Facilities desiring an affirmative defense for non-compliance with any applicable requirement due to an emergency shall follow the requirements established under the general provisions in this Part.]

#### Section 201-6.6 Permit renewal and modification.

(a) 'Expiration and renewal'. The following procedures shall apply when title V facility permits are renewed or expire:

(1) Permits that are being renewed are subject to the same procedural and review requirements,

including those for public participation and affected State and EPA review that apply to initial permit issuance. Renewal applications must include any revisions or modifications enacted during the previous permit term.

(2) Permit expiration terminates the major facility's right to operate unless a timely and complete renewal application has been submitted consistent with section 201-6.2(a) of this Subpart.

(3) If the department fails to act in a timely way in the renewal of a permit, the administrator may invoke the authority under section 505(e) of the act to terminate, modify or revoke and reissue a permit.

(4) The department shall take final action upon permit renewal within 18 months of receipt of a complete application. If the department fails to take final action on a renewal application within 18 months of the receipt of a complete application, such failure to act shall be treated as a final agency action solely for the purposes of judicial review for failure to take final action.

(5) All the terms and conditions of a permit shall be automatically continued pending final determination by the department on a request for permit renewal, provided the facility owner or operator has made a timely and complete application and paid the required fees.

(b) 'Administrative permit amendments'. (1) Administrative amendments to title V facility permits include the following changes:

(i) correction of typographical errors;

(ii) identification of a change in the name, address, or phone number of any person identified in the

permit or a similar minor administrative change at the source;

(iii) those requiring more frequent monitoring or reporting by the permittee;

(iv) those allowing for a change in ownership or operational control of a facility where the department determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the department; or

(v) incorporation into the permit of the requirements from a State facility permit issued by the department provided that public participation pursuant to Part 621 of this Title, and the EPA and affected State review process for the state facility permit were equivalent to the review process and compliance requirements necessary for issuance of a title V facility permit.

(2) the request for an administrative permit amendment shall be reviewed and acted upon by the department in accordance with the time frames and procedures established [under section 621.13] in Part 621 of this Title and subparagraph (i) of this paragraph. Administrative permit amendments for the purposes of the acid rain portion of the permit shall be governed by regulations promulgated under title IV of the act. The department may incorporate such changes into the permit without providing notice to the public or affected states provided that it designates any such permit revisions as having been made pursuant to this paragraph.

(i) Within 15 days of receipt of a request for an administrative permit amendment, the department shall take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that it designates any such permit revisions as having been made



pursuant to this section.

(ii) The department shall make a copy of the revised permit available to the administrator.

(iii) The owner or operator of a facility may implement the changes addressed in the request for an administrative amendment after 15 days from receipt of the request by the department.

(3) The department shall, upon taking final action granting a request for an administrative permit amendment, allow coverage by the permit shield in section 201-6.4 of this Subpart. The department shall also allow such coverage for administrative permit amendments made pursuant to subparagraph (1)(v) of this subdivision, provided the state facility permit met the relevant requirements of this Part for significant permit modifications.

(c) 'Minor permit modifications'.

(1) Minor permit modification procedures may be used only for those permit modifications that do not exceed the criteria under subparagraphs (i) through (v) of this paragraph. In no case shall a facility that has been issued multiple permits be allowed to make minor permit modifications which, in the aggregate, would be a significant permit modification if the facility had been issued a single permit, unless such facility complies with all the requirements for a significant modification.

(i) Do not violate any applicable requirement.

(ii) Do not involve significant changes to existing monitoring, reporting, or recordkeeping requirements in the permit and are not otherwise a significant change in the permit.

(iii) Do not require or change a case-by-case determination of a Federal emission limitation or other Federal standard, or a specific determination for portable sources causing adverse ambient impacts, or a visibility or increment analysis.

(iv) Do not seek to establish or change a permit term or condition that the facility has assumed to avoid an applicable requirement to which the emission source would otherwise be subject. Such terms and conditions include:

(‘a’) a federally enforceable emissions cap assumed to avoid classification as a modification under any provision of title I of the act[, including] or Part 231 of this Title; or

(‘b’) an alternative emissions limit approved pursuant to the early reduction program under section 112 of the act.

(v) Are not modifications under any provision of title I of the act, resulting in an NSR major modification as defined and regulated under Part 231 of this Title.

(2) Notwithstanding paragraphs (1) and (9) of this subdivision, minor permit modification procedures may be used for permit modifications involving the use of economic incentives, marketable permits, emission trading, and other similar approaches to the extent that such minor permit modification procedures are explicitly provided for in an applicable implementation plan or in applicable requirements promulgated by the administrator.

(3) An application for a minor permit modification shall meet the requirements of section 201-6.2(d) of

this Subpart, and shall provide the following information:

- (i) a description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

- (ii) certification by a responsible official, consistent with this Subpart, that the proposed modification meets the criteria contained herein for use of minor permit modification procedures and a request that such procedures be used;

- (iii) completed forms for use in notifying the administrator and affected states; and

- (iv) the major facility's suggested draft permit in a format acceptable to the department.

(4) The department will review and act on applications for minor permit modifications in accordance with timeframes and procedures established for minor projects under Part 621 of this Title. Upon application by an owner or operator for a minor permit modification, the department shall determine whether or not such application is complete within 15 days after receipt of such application and notify the applicant as required under Part 621 of this Title.

(5) The facility may proceed with the requested modification upon receipt of a notice of complete application from the department confirming that the modification is minor. If the department fails to issue such notice, the application shall be deemed complete by default on the 15th day after receipt of the application and the permittee may proceed with the requested modification on the 25th day after the date that the department received the application. After the facility or operator makes the change and until the department takes final action, or notifies the permittee that the requested modification does not meet the

minor modification criteria, or that EPA objects to the modification requested, the facility must comply with both the applicable requirements governing the change and any proposed permit terms and conditions. During this time period, the facility need not comply with the existing permit terms and conditions it seeks to modify. However, if the facility fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

(6) The department shall provide the notice of complete application, or provide an alternate form of notification approved by the administrator, to the administrator and affected states on or before the date that the applicant is notified. Such notification is not required if the modification involves only emission units or permit terms and conditions that are not subject to any applicable requirement.

(7) The department must issue a final decision on a minor modification request not later than 45 days after the date that the application was complete. However, the department may not issue a final permit modification until 45 days have elapsed from the date that the department notified the administrator under paragraph (6) of this subdivision or until the administrator has notified the department that they will not object to issuance of the permit modification, whichever occurs first.

(8) The permit shield described in section 201-6.4 of this Subpart does not extend to minor permit modifications.

(9) The department may process groups of applications for minor permit modifications simultaneously.

(d) 'Significant permit modifications'. Significant permit modifications are those that are not minor permit modifications or administrative permit amendments. Every significant change in existing monitoring permit terms or conditions, and every relaxation of reporting or recordkeeping permit terms or conditions at a facility

subject to this Subpart shall be considered significant. An application for permit modification should be submitted by the owner or operator, and shall be subject to the provisions of this Subpart for new applications for a permit.

(e) 'Reopenings for cause by EPA'. (1) If the administrator finds that cause exists to terminate, modify, or revoke and reissue a permit pursuant to section 201-6.4 of this Subpart, the administrator will notify the department and the permittee of such finding in writing.

(2) The department shall, within 90 days after receipt of such notification, forward to EPA a proposed determination of termination, modification, or revocation and reissuance, as appropriate. The administrator may extend this 90-day period for an additional 90 days if the administrator finds that a new or revised permit application is necessary or that the department must require the permittee to submit additional information.

(3) The administrator will review the proposed determination from the department within 90 days of receipt.

(4) The department shall have 90 days from receipt of an EPA objection to resolve any objection that EPA makes and to terminate, modify, or revoke and reissue the permit in accordance with the administrator's objection.

(5) If the department fails to submit a proposed determination pursuant to paragraph (2) of this subdivision or fails to resolve any objection pursuant to paragraph (4) of this subdivision, the administrator will terminate, modify, or revoke and reissue the permit after taking the following actions:

(i) providing at least 30 days' notice to the permittee in writing of the reasons for any such action.

This notice may be given during the procedures in paragraphs (1) through (4) of this subdivision;

(ii) providing the permittee an opportunity for comment on the administrator's proposed action and an opportunity for a hearing.

(f) 'Surrender of title V facility permits'. A source owner or operator may close down operations and surrender title V permit(s) to the department.

Section 201-6.7 Appendix A-Area Sources Regulated by National Emission Standards for Hazardous Air Pollutants Permanently Exempted from Title V Permitting.

40 CFR 63.320 Subpart M: Perchloroethylene Dry Cleaning Facilities

40 CFR 63.340 Subpart N: Chromium Electroplating

40 CFR 63.360 Subpart O: Ethylene Oxide Commercial Sterilization

40 CFR 63.460 Subpart T: Halogenated Solvent Metal Cleaning

## SUBPART 201-7

### FEDERALLY ENFORCEABLE EMISSION CAPS

#### Section 201-7.1 Emission capping in facility permits.

(a) The owner or operator of a facility subject to this Part may elect to accept federally enforceable permit conditions which restrict or cap emissions from the facility or an emission source below one or more applicable requirements or where needed to establish an emission reduction credit as defined in Part 231 of this Title.

(b) When an emission cap is desired, the facility owner or operator must submit an application for a facility permit or facility permit modification which includes the information in subdivisions (c) and (d) of this section. The facility owner or operator may also accept the conditions of a department initiated permit modification in accordance with Part 621 of this Title to establish an emission cap.

(c) A facility permit or facility permit modification application that proposes a cap must contain the following material in addition to the requirements of Subparts 201-5 or 201-6 of this Part[, whichever is applicable:

(1) a complete description of the proposed emission cap, including all background information on the emission sources and processes involved, including, but not limited to:

(i) emissions of individual regulated pollutants;

(ii) duration and frequency of emissions;

(iii) existing or proposed control equipment;

(iv) other emission sources releasing the same contaminants at the facility;

(v) calculations assessing the applicability status of the facility; and

(vi) calculations demonstrating that the cap will obviate the requirement to obtain a title V facility permit and/or comply with an applicable requirement.]

This includes a complete description of the proposed emission cap, including all background information on the emission sources and processes involved, including, but not limited to:

(1) emissions of individual regulated pollutants;

(2) duration and frequency of emissions;

(3) existing or proposed control equipment;

(4) other emission sources releasing the same contaminants at the facility;

(5) calculations assessing the applicability status of the facility; and

(6) calculations demonstrating that the cap will obviate the requirement to obtain a title V facility permit and or comply with an applicable requirement.

(d) The facility owner or operator must also include a proposed monitoring, recordkeeping, and reporting strategy that will be used to demonstrate that the emissions limitations under the proposed cap are verifiable, and enforceable, along with the proposed permit conditions. Capping methods may include: a reduction in the hours of operation; reformulations relating to the cap, the installation of control equipment; and/or making other process changes.

(e) Permits and permit modifications involving proposed emission caps under this Subpart are subject to the public notice and comment procedures required for new permit applications under Part 621 of this Title. Copies



of permits including capping conditions shall be forwarded to the administrator, unless the administrator approves an alternate procedure for reviewing such permits or exempts certain classes of permits from such review.

(f) When approved by the department, federally-enforceable conditions will be incorporated into the permit limiting emissions below those requiring a title V facility permit or compliance with a specific applicable requirement.

(g) The owner or operator of a facility subject to this section must maintain all required records on-site for a period of five years and make them available to representatives of the department upon request. Department representatives must be granted access to any facility regulated by this Subpart, during normal operating hours, for the purpose of determining compliance with this and any other State and Federal air pollution control requirements, regulations or law.

(h) On an annual basis, beginning one year after the granting of an emissions cap, the responsible official shall provide a certification to the department that the facility has operated all emission sources within the limits imposed by the emission cap. This certification shall include a brief summary of the emissions subject to the cap for that time period and a comparison to those threshold levels that would require the submission of an application for a title V facility permit, or compliance with an applicable requirement.

(i) The emission of pollutants in excess of the applicability thresholds for obtaining a title V facility permit or other applicable requirements constitutes a violation of this Part and of the act.

SUBPART 201-8  
GENERAL PERMITS

Section 201-8.1 Purpose and applicability.

(a) This Subpart is intended to implement the provisions of Environmental Conservation Law, section 19-0311 that provides for the issuance of general permits covering numerous similar emission sources or source categories for purposes of complying with title V of the act or to augment other permitting requirements under this Part. The department may issue general permits for facilities subject to the permitting requirements under Subparts 201-5 and 201-6 of this Part, except that general permits cannot be authorized for affected sources under the Acid Rain Program unless otherwise provided in regulations promulgated under title IV of the act.

(b) The department shall not issue general permits for new facilities subject to the Federal prevention of significant deterioration regulations or nonattainment area permitting regulations under Part 231 of this Title.

Section 201-8.2 Permit development and issuance criteria.

(a) The general permit will contain the conditions and requirements that apply to emission sources and processes authorized under it and any qualifying criteria or limitations on the use or eligibility of the permit.

(b) The department will provide public notice and an opportunity for comment on proposed general permits prior to issuance and in accordance with the procedures and timeframes established under Part 621 of this Title.

Section 201-8.3 Applications and approval procedures.

(a) Emission sources that qualify for a general permit must apply to the department for authorization to use the general permit in a format approved by the department.

(b) All requests for authorization to use a general permit must meet the application content requirements established under this Part or specific alternate requirements defined by the department in the general permit. When establishing alternate application requirements for general permits developed for sources subject to Subpart 201-6 of this Part, the department must ensure that such applications:

(1) meet the requirements of title V of the act; and

(2) include sufficient information to determine qualification for the general permit, and the applicant's certification of compliance with the terms and conditions of the general permit.

(c) The department will act on applications requesting use of a general permit in accordance with timeframes and procedures for minor permit projects established under Part 621 of this Title. Authorization to use the general permit shall be issued by the department in the form of a letter, an approved application, a copy of the actual general permit or other comparable documentation.

(d) The department may request that a facility that otherwise meets the criteria for a general permit as described in this Subpart obtain a State facility permit in cases where permit conditions are required to ensure the facility complies with all applicable requirements. The facility owner or operator must submit a State facility permit application as described in section 201-5.2 of this Part within six months of notification from the department.

(e) Construction of a new or modified emission source which qualifies for a general permit may not commence until the source has been issued the authorization required by the department under subdivision (c) of this section.



# SUBPART 201-9

## TABLES

Existing Subpart 201-9 is repealed. A new Subpart 201-9 is added as follows.

Table 1 - Significant Mass Emission Rates for High Toxicity Air Contaminants.

<u>CAS Number</u>	<u>Contaminant Name</u>	<u>Mass Emission Limit</u> <u>(pounds per year)</u>
<u>000050-00-0</u>	<u>Formaldehyde</u>	<u>100</u>
<u>000056-23-5</u>	<u>Carbon tetrachloride</u>	<u>100</u>
<u>000062-53-3</u>	<u>Aniline</u>	<u>1000</u>
<u>000064-67-5</u>	<u>Diethyl sulfate</u>	<u>250</u>
<u>000071-43-2</u>	<u>Benzene</u>	<u>100</u>
<u>000074-90-8</u>	<u>Hydrogen cyanide</u>	<u>100</u>
<u>000075-01-4</u>	<u>Vinyl chloride</u>	<u>100</u>
<u>000075-07-0</u>	<u>Acetaldehyde</u>	<u>1000</u>
<u>000075-21-8</u>	<u>Ethylene oxide</u>	<u>25</u>
<u>000075-44-5</u>	<u>Phosgene</u>	<u>500</u>
<u>000077-78-1</u>	<u>Dimethyl sulfate</u>	<u>250</u>
<u>000078-87-5</u>	<u>Propylene dichloride</u>	<u>1000</u>
<u>000079-00-5</u>	<u>1,1,2 trichloroethane</u>	<u>100</u>
<u>000079-01-6</u>	<u>Trichloroethylene</u>	<u>500</u>
<u>000079-06-1</u>	<u>Acrylamide</u>	<u>10</u>
<u>000079-11-8</u>	<u>Chloroacetic acid</u>	<u>1000</u>
<u>000079-34-5</u>	<u>1,1,2,2-tetrachloroethane</u>	<u>1000</u>

<u>CAS Number</u>	<u>Contaminant Name</u>	<u>Mass Emission Limit</u> (pounds per year)
<u>000079-46-9</u>	<u>2-nitropropane</u>	<u>5000</u>
<u>000091-94-1</u>	<u>3,3'-dichlorobenzidine</u>	<u>5</u>
<u>000092-87-5</u>	<u>Benzidine</u>	<u>0.1</u>
<u>000095-53-4</u>	<u>O-toluidine</u>	<u>100</u>
<u>000096-45-7</u>	<u>Ethylene thiourea</u>	<u>100</u>
<u>000100-44-7</u>	<u>Benzyl chloride</u>	<u>25</u>
<u>000106-93-4</u>	<u>1,2-dibromoethane</u>	<u>5</u>
<u>000106-94-5</u>	<u>1-bromopropane</u>	<u>500</u>
<u>000106-99-0</u>	<u>1,3-butadiene</u>	<u>25</u>
<u>000107-02-8</u>	<u>Acrolein</u>	<u>25</u>
<u>000107-06-2</u>	<u>1,2-dichloroethane</u>	<u>100</u>
<u>000107-13-1</u>	<u>Acrylonitrile</u>	<u>25</u>
<u>000107-18-6</u>	<u>Allyl alcohol</u>	<u>500</u>
<u>000109-86-4</u>	<u>2-methoxy ethanol</u>	<u>5000</u>
<u>000118-74-1</u>	<u>Hexachlorobenzene</u>	<u>5</u>
<u>000122-66-7</u>	<u>Diphenyl hydrazine</u>	<u>10</u>
<u>000127-18-4</u>	<u>Perchloroethylene</u>	<u>1000</u>
<u>000302-01-2</u>	<u>Hydrazine</u>	<u>0.1</u>
<u>000542-75-6</u>	<u>1,3-dichloropropene</u>	<u>500</u>
<u>000593-60-2</u>	<u>Vinyl bromide</u>	<u>500</u>
<u>000625-31-0</u>	<u>4-penten-2-ol</u>	<u>500</u>
<u>001336-36-3</u>	<u>Polychlorinated biphenyls (PCBs)</u>	<u>1</u>

<u>CAS Number</u>	<u>Contaminant Name</u>	<u>Mass Emission Limit</u> (pounds per year)
<u>001395-21-7</u>	<u>Subtilisin</u>	<u>NA*</u>
<u>001746-01-6</u>	<u>2,3,7,8 TCDD TEF</u> <u>Polychlorinated Dibenzodioxins</u> <u>Polychlorinated Dibenzofurans</u>	<u>0.0001</u>
<u>002465-27-2</u>	<u>Auramine</u>	<u>0.1</u>
<u>007440-62-2</u>	<u>Vanadium</u>	<u>25</u>
<u>007550-45-0</u>	<u>Titanium tetrachloride</u>	<u>0.1</u>
<u>007784-42-1</u>	<u>Arsine</u>	<u>10</u>
<u>009014-01-1</u>	<u>Subtilisin, fermentation product</u>	<u>NA*</u>
<u>029082-74-4</u>	<u>Octachlorostyrene</u>	<u>NA*</u>
-	<u>Arsenic compounds</u>	<u>1</u>
	<u>Beryllium compounds</u>	<u>1</u>
	<u>Brominated Flame Retardants**</u>	<u>100</u>
-	<u>Cadmium compounds</u>	<u>1</u>
-	<u>Chromium compounds</u>	<u>250</u>
	<u>Chromium (VI) compounds</u>	<u>0.1</u>
-	<u>Diisocyanate compounds</u>	<u>100</u>
	<u>Lead compounds</u>	<u>5</u>
-	<u>Manganese compounds</u>	<u>10</u>
-	<u>Mercury compounds</u>	<u>5</u>
-	<u>Nickel compounds</u>	<u>10</u>
-	<u>Pesticide, herbicide, rodenticide, insecticide***</u>	<u>NA*</u>

<u>CAS Number</u>	<u>Contaminant Name</u>	<u>Mass Emission Limit</u> (pounds per year)
-	<u>Polycyclic organic matter (POM)</u>	<u>1</u>
-	<u>Polytetrafluoroethylene (decomposition)</u>	<u>NA*</u>

\* Facilities emitting these compounds are ineligible to register and must apply for an air state facility permit

\*\*Including but not limited to Polybrominated diphenyl ethers (PBDEs), Tetrabromobisphenol A (TBBPA),

Hexabromocyclododecane (HBCD)

\*\*\* Aldrin/Dieldrin (000309-00-2), Chlordane (000057-74-9 and 012789-03-6), DDE (000072-55-9), DDT

(000050-29-3), Heptachlor (000076-44-8), Isodrin (000465-73-6),

Methoxychlor (000072-43-5), Pendimethalin (040487-42-1),

Pentachlorobenzene (000608-93-5), (000079-94-7), Toxaphene (008001-35-2), Trifluralin (001582-09-8)

## SUBPART 201-10

### SEVERABILITY

#### Section 201-10.1 Severability

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



Revised PART 200

GENERAL PROVISIONS

(Subdivisions 200.1(a) through 200.1(k) remain unchanged.)

(l) 'Combustion installation'. An installation, consisting of a single furnace, device, engine, or turbine in which fossil fuel, [and/or] wood, and/or other solid, liquid, or gaseous fuel is burned with air or oxygen and the air contaminant emissions include only those products resulting from:

(1) Combustion of the fuel;

(2) Additives or impurities in the fuel; and

(3) Material introduced for the purpose of altering air contaminant emissions.

(Subdivisions 200.1(m) through 200.1(cp) remain unchanged.)

(cq) 'Emergency power generating stationary internal combustion engine'. A stationary internal combustion engine that operates as a mechanical or electrical power source only when the usual supply of power is unavailable, and operates for no more than 500 hours per year. The 500 hours of annual operation for the engine include operation during emergency situations, routine maintenance, and routine exercising (for example, test firing the engine for one hour a week to ensure reliability). If a state disaster emergency is declared pursuant to Section 28 of the New York State Executive Law, the 500-hour limitation is suspended for the duration of the state disaster emergency. A stationary internal combustion engine used for peak shaving

generation or demand response programs is not an emergency power generating stationary internal combustion engine.

(Subdivisions 200.1(cr) through 200.1(da) remain unchanged.)

([cy]db) ‘Fossil fuel’. Natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such material for the purpose of creating useful heat.

([cz]dc) ‘Furnace’. Any device (excluding internal combustion engines and gas turbines) that combusts fossil fuel, wood, and/or other solid, liquid, or gaseous fuel for any purpose and whose emissions to the outdoor atmosphere only include the products of combustion from the fuel.

(Sections 200.2 through 200.8 remain unchanged)

Section 200.9, Table 1 is amended to read as follows:

201-2.1(b)(15)	40 CFR Part 72 Subpart B (July 1, 2008)	*
201-2.1(b)(21)	Standard Industrial Classification Manual (1987)	*****
	Clean Air Act, 42 U.S.C. Section 111 as amended by Public Law 101-549 (November 15, 1990)	**
	Clean Air Act, 42 U.S.C. Section 112 as amended by Public Law 101-549 (November 15, 1990)	**
201-3.2(c)(39)	40 CFR Part 63 Subpart T (July 1, 2009)	*
201-3.3(c)(43)	40 CFR Part 61 Subpart M (July 1, 2007)	*

201-3.3(c)(94)	United States Department of Health and Human Services' [Twelfth Annual] <u>Fourteenth</u> Report on Carcinogens [(2011)] <u>(2016)</u>	*****
201-6.1(a)(2)	40 CFR Part 60 (July 1, 2003)	*
201-6.1(a)(3)	40 CFR Part 61 (July 1, 2007)	*
	40 CFR Part 63 (July 1, 2009)	*
201-6.1(b)(3)(i)	40 CFR Part 60 Subpart AAA (July 1, 2003)	*
201-6.1(b)(3)(ii)	40 CFR Part 61 Subpart M (July 1, 2007)	*
201-6.2(d)(8)(v)	40 CFR Part 72 (July 1, 2008)	*



Revised PART 212  
PROCESS OPERATIONS

SUBPART 212-1  
GENERAL PROVISIONS

Section 212-1.1 Applicability.

(a) Part 212 applies to process emission sources and/or emission points associated with a process operation, unless excepted from the provision of this Part pursuant to Section 212-1.4 of this Subpart:

(1) upon issuance of a new or modified permit or registration for a facility containing process emission sources and/or emission points.

(2) Upon issuance of a renewal for an existing permit or registration.

(b) Any emission limitation or other requirements in effect prior to the effective date of this Part shall remain in effect until issuance of a modified permit or registration or renewal of the permit or registration.

Section 212-1.2 Definitions.

(a) For the purpose of this Part, the general definitions in Part 200 of this Title apply.

(b) For the purpose of this Part, the following definitions also apply:

(1) 'Aggregate.' Any hard, inert material used for mixing in graduated particles or fragments. Includes sand, gravel, crushed stone, slag, rock dust or powder.

(2) 'Animal [Oncogens] Oncogenes.' Chemicals for which oncogenicity has been demonstrated in at least one mammalian species.

(3) 'Carcinogenic to Humans'. Chemicals where there is convincing epidemiological evidence of a causal association between human exposure and cancer as described by the United States Environmental Protection Agency Guidelines for Carcinogen Risk Assessment.

(4) 'Criteria Air Contaminant.' Particulate matter, ground-level ozone, carbon monoxide, sulfur oxides, nitrogen dioxide. Elemental lead is a criteria air contaminant as well as a federal Hazardous Air Pollutant: elemental lead and lead compounds are also treated as a High Toxicity Air Contaminant.

(5) 'Guideline Concentrations.' Ambient air concentrations that are listed in the Division of Air Resource's Annual and Short-term Guideline Concentrations (AGC/SGC) Tables.

(6) 'Genotoxic Chemicals'. Chemicals that have been shown to damage DNA or chromosomes in in-vitro and/or in-vivo short-term tests.

(7) 'Hot mix asphalt.' Paving material that is produced by mixing hot dried aggregate with heated asphalt cement.

(8) 'Hot Mix Asphalt Production Plant.' A facility comprised of process operations to produce paving material manufactured by mixing hot dried aggregate with heated asphalt cement.

(9) 'High Toxicity Air Contaminants (HTACs).' Chemicals that are carcinogenic to humans; or likely to be carcinogenic to humans; or chemicals that are known to cause adverse outcomes in humans for reproductive and developmental effects; or chemicals that elicit irreversible or progressive detrimental effects that have been observed in humans; or chemicals meeting the definition of Persistent and Bioaccumulative in this section; or any chemicals meeting the following LC<sub>50</sub> or LD<sub>50</sub> values:

'(i)' LD<sub>50</sub> (dermal) is equal or less than 200 mg/kg; or

'(ii)' LC<sub>50</sub> (inhalation) is equal or less than 200 ppm; or

'(iii)' LD<sub>50</sub> (oral) is equal or less than 50 mg/kg.

(10) 'Low NO<sub>x</sub> burner.' A burner designed to reduce flame turbulence by the mixing of fuel and air and by establishing fuel-rich zones for initial combustion, thereby reducing the formation of nitrogen oxides (NO<sub>x</sub>).

(11) 'Lethal Dose Fifty or Lethal Concentration Fifty (LD<sub>50</sub> or LC<sub>50</sub>).'. The median administered dose that will kill 50 percent of a tested mammalian specie.

(12) 'Likely to be Carcinogenic in Humans.' Chemicals with evidence indicating oncogenicity in two mammalian species; or one mammalian species, independently reproduced; or one mammalian species, to an unusual degree with respect to incidence, latency period, site, tumor type or age at onset; or one mammalian species, supported by positive results in short-term tests which are indicative of potential oncogenic activity.

(13) 'Low Toxicity Air Contaminant'. Chemicals that can cause irritation or reversible effects to sensitive members of the population, and which do not meet the criteria for classification as a High Toxicity

or Moderate Toxicity Air Contaminants.

(14) 'Moderate Toxicity Air Contaminants'. Chemicals that are animal [oncogens] oncogenes; or chemicals that are known to cause adverse outcomes in animal species for reproductive and developmental effects; or genotoxic chemicals; or chemicals that when inhaled have caused significant chronic adverse effects in test animals, or any chemicals meeting the following LC<sub>50</sub> or LD<sub>50</sub> values:

‘(i)’ LD<sub>50</sub> (dermal) is greater than 200 mg/kg but less than 1,000 mg/kg; or

‘(ii)’ LC<sub>50</sub> (inhalation) is greater than 200 ppm but less than 2,000 ppm; or

‘(iii)’ LD<sub>50</sub> (oral) is greater than 50 mg/kg but less than 500 mg/kg.

(15) 'Overall removal efficiency.' The total reduction of VOC emissions considering the efficiency of both the capture system and of the subsequent destruction and/or removal of these air contaminants by the control equipment prior to their release into the outdoor atmosphere.

(16) 'Persistent and Bioaccumulative.' Where chemicals that are emitted to the air persist in the environment, and are estimated to have a half-life of greater than or equal to six months in water or soil or sediments; or where chemicals have the ability to bioconcentrate or biomagnify in the food chain and have bioconcentration factors (BCFs) greater than 1,000 in fish or shellfish.

(17) 'Persistent and Bioaccumulative (PB) Trigger.' A yearly mass emission limit equaling 10 times the mass emission listed in Section 212-2.2 of this Part for all corresponding persistent and bioaccumulative air contaminants emitted from the facility.

(18) 'Process operation.' Any industrial, institutional, commercial, agricultural or other activity,



operation, manufacture or treatment in which chemical, biological and/or physical properties of the material or materials are changed, or in which the material(s) is conveyed or stored without changing the material(s) if the conveyance or storage system is equipped with a vent(s) and is non-mobile, and that emits air contaminants to the outdoor atmosphere. A process operation does not include an open fire, operation of a combustion installation, or incineration of refuse other than by-products or wastes from a process operation(s).

(19) 'Process Emission Source.' Any apparatus, contrivance or machine, including any appurtenant exhaust system or air cleaning device capable of causing emissions of any air contaminant to the outdoor atmosphere from a process operation.

(20) 'Toxic - Best Available Control Technology (T-BACT).' The maximum degree of reduction or the emission limitation for each non-criteria air contaminant that the department determines is achievable for a process operation on a case-by-case basis. The department will determine an achievable degree of reduction or emission limitation using the following parameters:

- (i) process, fuels and raw material available [and] to be used;
- (ii) engineering aspects of the application of various types of control technology which have been adequately demonstrated;
- (iii) process and fuel changes;
- (iv) respective costs of the application of all such control technologies, process changes, alternative fuels, etc.; and the
- (v) toxicity of the air contaminant.

(21) 'Toxic Impact Assessment (TIA).' An inhalation risk assessment that is supported by a protocol

describing the procedures to be used to predict maximum offsite ambient air concentrations.

(22) ‘Tune-up.’ Adjustments made to a burner in accordance with procedures supplied by the manufacturer (or an approved specialist) to optimize the combustion efficiency.

#### Section 212-1.3 Determination of Environmental Rating.

In accordance with the applicability requirements of Section 212-1.1 of this Part, the department will assign an environmental rating for each air contaminant emitted from each process emission source or emission point in accordance with Subdivisions (a) through (e) of this Section. The factors in Subdivisions (a) through (d) will be considered in making a determination of the environmental rating to be applied to an air contaminant pursuant to subdivision (e), Table 1 – Environmental Rating Criteria of this section.

(a) Toxic and other properties and emission rate potential of the air contaminant;

(b) location of the process emission source or emission point(s) for the air contaminant with respect to residences or other sensitive environmental receptors, taking into account the area’s anticipated growth;

(c) emission dispersion characteristics at or near the process emission source or emission point(s), taking into account the physical location of the process emission source or emission point(s) relative to the surrounding buildings and terrain; and

(d) the projected maximum cumulative impact of an air contaminant taking into account emissions from all process emission sources at the facility under review and the pre-existing ambient concentration of the air contaminant under review.

(e) Table 1 - Environmental Rating Criteria

'Rating'	'Criteria'
A	An air contaminant whose discharge results, or may result, in serious adverse effects on receptors or the environment. These effects may be of a health, economic or aesthetic nature or any combination of these.
B	An air contaminant whose discharge results, or may result in only moderate and essentially localized effects; or where the multiplicity of sources of the contaminant in any given area require an overall reduction of the atmospheric burden of that contaminant.
C	An air contaminant whose discharge may result in localized adverse effects of an aesthetic or nuisance nature.
D	An air contaminant whose discharge will not result in measurable or observable effects on receptors, nor add to an existing or predictable atmospheric burden of that contaminant which may cause adverse effects, considering properties and concentrations of the emissions, isolated conditions, stack height, and other factors.

Section 212-1.4 Exceptions.

The following process emission sources are not subject to the provisions of this Part:

(a) process emission sources that are either temporary emission sources under Section 201-1.11 of this Title [and] or process emission sources that are exempt or trivial under Sections 201-3.2 and 201-3.3 of this Title, respectively;

(b) kilns and clinker coolers in portland cement plants subject to Subpart 220-1 or glass plants subject to Subpart 220-2 of this Title, only with respect to emissions of air contaminants that are not given an A rating;

(c) process emission sources, other than kilns and clinker coolers, in a Portland cement plant, only with respect to opacity of emissions;

(d) ferrous jobbing foundry melting furnaces in operation on or prior to February 6, 1968, only with respect to particulate emissions;

(e) air contaminants subject to Part 214 of this Title, only from by-product coke oven batteries as defined in section 214.1(b)(1) of this Title. Air contaminants generated from flue gas handling, flue gas treatment, ammonia stripping and by-product recovery are subject to the requirements of this Part unless specifically defined and controlled in a New Source Performance Standard (NSPS);

(f) process emissions sources at any gasoline, petroleum, or VOC liquid storage or transfer facility that is subject to Part 229 of this Title, only with respect to emissions of VOCs that are not given an A rating;

(g) process emission sources in a sulfuric or nitric acid plant that is subject to Part 224 of this Title, only with respect to emissions of NO<sub>x</sub>, oxides of sulfur, sulfuric acid mist and smoke;

(h) process emission sources at a petroleum refinery subject to Part 223 of this Title, only with respect to sulfur compound emissions and emissions of VOCs that are not given an A rating;

(i) process emission sources with emissions of oxides of sulfur, only with respect to oxides of sulfur emissions attributable solely to sulfur in fuel;

(j) process emissions sources at a solvent metal cleaning process operation subject to Part 226 of this Title or a solvent metal cleaning process operation exempt from Part 226 of this Title [pursuant to Section 226.2,] only with respect to emissions of VOCs that are not given an A rating;

(k) process emission sources at iron and/or steel processes, only with respect to emissions that are not given an A rating, subject to Part 216 of this Title;

(l)(1) process emission sources subject to Table 1 of Subpart 228-1 of this Title or process emission sources exempt from Subpart 228-1 of this Title pursuant to section 228-1.1(b), only with respect to emissions [of VOCs] that are not given an A rating;

(2) process emission sources associated with mobile equipment repair and refinishing as described in Subpart 228-1 of this Title;

(3) commercial and industrial adhesives, sealants, or primers subject to Subpart 228-2 of this Title, only with respect to emissions [of VOCs] that are not given an A rating;

(m) process emission sources with emissions of carbon monoxide or VOCs produced attributable solely to incomplete combustion of any fuel, except where material is heated, burned, combusted or otherwise chemically changed under oxygen deficient conditions by design;

(n) dry cleaning facilities subject to Part 232 of this Title;

(o) pharmaceutical and cosmetic manufacturing process operations subject to Part 233 of this Title and process operations exempt from Part 233 of this Title pursuant to Section 233.1(g), only with respect to emissions of VOCs that are not given an A rating;

(p) graphic arts process operations subject to Section 234.1(a) of this Title and graphic arts process operations exempt from Part 234 of this Title pursuant to Section 234.1(d) of this Title, only with respect to emissions of VOCs that are not given an A rating;

(q) process emissions sources at a primary aluminum reduction plant subject to Part 209 of this Title, only with respect to opacity and emissions of total fluorides;

(r) process emission sources with respect to emissions of NO<sub>x</sub> produced by catalytic or thermal oxidizers used as air pollution control equipment; and

(s) gasoline dispensing sites and transport vehicles that are subject to Part 230 of this Title;

#### Section 212-1.5 Determining applicable emission standards for process operations.

(a) In instances where air contaminants from two or more process emission sources may be simultaneously emitted to the outdoor atmosphere through a single emission point, the permissible emission rate or degree of air cleaning required is determined by using the sum of the process weights or emission rate potentials for all process emission sources.

(b) In instances where air contaminants from a single process emission source are emitted to the outdoor atmosphere through more than one emission point, the sum of the emissions from all such emission points shall not exceed the quantity that would be authorized through a single emission point.

(c) In instances where air contaminants from two or more process emission sources are emitted to the outdoor atmosphere through a single emission point and the applicable emission standard for one or more process emission sources, if vented separately to the outdoor atmosphere, is a concentration standard (grains per standard cubic foot), the permissible emission rate through such emission point shall not exceed the quantity that would be authorized if the emissions were through separate emission points.

(d) In instances where a facility owner or operator can demonstrate to the satisfaction of the department that the facility owner or operator will apply BACT for criteria air contaminants or T-BACT for non-criteria air contaminants, the department may specify a less restrictive permissible emission rate or degree of air cleaning for the process emission source or emission point than required under Subpart 212-2 of this Part.

(e)(1) A process emission source subject to a Federal NSPS under 40 CFR Part 60 (see Table 1, Section 200.9 of this Title) satisfies the requirements of this Part for the respective air contaminant regulated by the Federal standard if the facility owner or operator can demonstrate that the facility is in compliance with the relevant Federal regulation.

(2) A process emission source subject to the Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) under 40 CFR Part 61 or Part 63 (see Table 1 of Section 200.9 of this Title) satisfies the requirements of this Part for the respective air contaminant regulated by the Federal standard if the facility owner or operator can demonstrate that the process emission source is in compliance with the relevant Federal

regulation and, for those NESHAPs regulating HTACs found in Section 212-2.2, Table 2 – High Toxicity Air Contaminant List, of this Part, provide a TIA demonstrating that the maximum offsite ambient air concentration is less than the AGC/SGC or meeting the mass emission limit identified in Section 212-2.2, Table 2. Either compliance option must have actual [and that] emissions [are] less than the PB trigger for the respective air contaminant.

Facility owners or operators required to submit a TIA shall submit a protocol describing the procedures to be used to predict the maximum offsite ambient air concentration. Once the protocol is approved by the department and the TIA is conducted, the facility owner or operator shall submit a final report to the department along with the air dispersion modeling results for approval. The department requires the use of an EPA approved air dispersion model for all screening and/or refined air dispersion modeling assessments; however, screen dispersion models do not require an approved modeling protocol.

(f) Facility owners or operators whose process operations emit NO<sub>x</sub> or VOCs and meet the applicability requirements of Subpart 212-3 or Subpart 212-4 of this Part are not subject to the control provisions in Subpart 212-2 of this Part for NO<sub>x</sub> or VOCs. However, if an individual air contaminant, as a component of total VOCs, is assigned an environmental rating of A, that individual air contaminant must meet the control requirements of Subpart 212-2 of this Part.

(g) At all times, the facility owner or operator must operate and maintain all process emission sources, including the associated air pollution control and monitoring equipment, in a manner consistent with safety, good air pollution control practices, good engineering practices and manufacturers' recommendations for minimizing emissions.



#### Section 212-1.6 Limiting of Opacity.

(a) No facility owner or operator shall cause or allow emissions having an average opacity during any six consecutive minutes of 20 percent or greater from any process emission source or emission point, except for the emission of uncombined water.

(b) Upon written application by a facility owner or operator, the department may allow for a process emission source or emission point an equivalent opacity standard exceeding the opacity standard of Subdivision (a) of this Section, if the facility owner or operator can demonstrate through acceptable tests for such source that the facility is in compliance with all applicable emission limits and requirements other than the opacity standard and that the process emission source and any associated emission control equipment is being operated and maintained in a manner acceptable to the department. An equivalent opacity standard for a process emission source will only be allowed where Reasonably Available Control Technology (RACT), as determined by the department, has been utilized for air contaminants contributing to opacity. In such cases, the facility owner or operator shall not cause or allow emissions to exceed the equivalent opacity standard.

#### Section 212-1.7 Sampling and Monitoring.

(a) Facility owners and/or operators of a process emission source required by the department to demonstrate compliance with this Part may be required to conduct capture efficiency and/or stack emissions testing using acceptable and approved procedures pursuant to Part 202 of this Title.

(b) Facility owners and/or operators of any emission source equipped with either a thermal or catalytic oxidizer, fixed bed carbon absorption unit or refrigerated condenser must install continuous monitors and data recorders for the applicable parameters listed in Paragraphs (b)(1) through (b)(5) of this Subdivision prior to start-up of a new or modified process emission source(s). Continuous monitors must be operated at all times

when the associated emission control equipment is operating except during any quality assurance and routine maintenance activities. Each monitor must be operated according to a quality assurance program approved by the department. Alternative monitoring methods may be employed subject to department approval.

(1) the exhaust gas temperature from thermal or catalytic oxidizer;

(2) the temperature rise across catalytic oxidizer beds;

(3) the VOC outlet concentrations from fixed-bed carbon adsorption units;

(4) the outlet gas temperature from refrigerated condensers; or

(5) any other parameters required by conditions in the State Facility or Title V Permit for the process emission source.

(c) For the purpose of ascertaining compliance with this Part, the department may obtain or require the facility owner or operator of an emission source to provide a sample of any type 5 or 6 refuse (see Table 1 of Appendix 2 of Part 219 of this Title for classifications of refuse) where such refuse is an input material of the process operation.

(d) Any facility that was subject to this Section after June 1, 1995, will remain subject to these provisions for all applicable parameters listed in Paragraphs (b)(1) through (b)(5) of this section.

## SUBPART 212-2

### ALLOWABLE EMISSIONS

## Section 212-2.1. Requirements.

Emissions of air contaminants to the outdoor atmosphere from any process emission source or emission point are restricted as follows:

(a) for an air contaminant listed in Section 212-2.2 Table 2 – High Toxicity Air Contaminant List, of this Part, the facility owner or operator shall either limit the actual annual emissions from all process operations at the facility so as to not exceed the mass emission limit listed for the individual HTAC; or demonstrate compliance with the air cleaning requirements for the HTAC as specified in Subdivision 212-2.3(b), Table 4 – Degree of Air Cleaning Required for Non-Criteria Air Contaminants, of this Part for the environmental rating assigned to the contaminant by the department.

(b) for any air contaminant not listed on Table 2, unless it is a solid particulate described in subdivision (c) of this Section, the facility owner or operator shall not allow emissions of an air contaminant to violate the requirements specified in Subdivision 212-2.3(a), Table 3 – Degree of Air Cleaning Required for Criteria Air Contaminants of this Subpart, or Subdivision 212-2.3(b), Table 4 – Degree of Air Cleaning Required for Non-Criteria Air Contaminants of this Subpart, as applicable, for the environmental rating assigned to the contaminant by the department.

(c) for a solid particulate assigned an environmental rating of B or C emitted from a process emission source, the facility owner or operator shall not allow emissions of particulate to exceed the requirements specified in Subpart 212-2.4 of this Part.

## Section 212-2.2 Table 2 – High Toxicity Air Contaminant List

CAS Number	Contaminant Name	Mass Emission Limit (pounds per year)	PB Trigger Applicable
000050-00-0	Formaldehyde	100	
000056-23-5	Carbon tetrachloride	100	
000062-53-3	Aniline	1000	
000064-67-5	Diethyl sulfate	250	
[000067-66-3]	[Chloroform]	[100]	
000071-43-2	Benzene	100	
000074-90-8	Hydrogen cyanide	100	
000075-01-4	Vinyl chloride	100	
000075-07-0	Acetaldehyde	1000	
000075-21-8	Ethylene oxide	25	
000075-44-5	Phosgene	500	
000077-78-1	Dimethyl sulfate	250	
000078-87-5	Propylene dichloride	1000	
000079-00-5	1,1,2 trichloroethane	100	
000079-01-6	Trichloroethylene	500	
000079-06-1	Acrylamide	10	
000079-11-8	Chloroacetic acid	1000	
000079-34-5	1,1,2,2-tetrachloroethane	1000	
000079-46-9	2-nitropropane	5000	
000091-94-1	3,3'-dichlorobenzidine	5	

CAS Number	Contaminant Name	Mass Emission Limit (pounds per year)	PB Trigger Applicable
000092-87-5	Benzidine	0.1	
000095-53-4	O-toluidine	[5000] <u>100</u>	
000096-45-7	Ethylene thiourea	100	
000100-44-7	Benzyl chloride	25	
000106-93-4	1,2-dibromoethane	5	
<u>000106-94-5</u>	<u>1-bromopropane</u>	<u>500</u>	
000106-99-0	1,3-butadiene	25	
000107-02-8	Acrolein	25	
000107-06-2	1,2-dichloroethane	100	
000107-13-1	Acrylonitrile	25	
000107-18-6	Allyl alcohol	500	
000109-86-4	2-methoxy ethanol	5000	
000118-74-1	Hexachlorobenzene	5	Yes
000122-66-7	Diphenyl hydrazine	10	
000127-18-4	Perchloroethylene	1000	
000302-01-2	Hydrazine	0.1	
000542-75-6	1,3-dichloropropene	500	
000593-60-2	Vinyl bromide	500	
000625-31-0	4-penten-2-ol	500	
001336-36-3	Polychlorinated biphenyls (PCBs)	1	Yes

CAS Number	Contaminant Name	Mass Emission Limit (pounds per year)	PB Trigger Applicable
001395-21-7	Subtilisin	NA*	
001746-01-6	2,3,7,8 TCDD TEF Polychlorinated Dibenzodioxins Polychlorinated Dibenzofurans	0.0001	Yes
002465-27-2	Auramine	0.1	
007440-62-2	Vanadium	25	
007550-45-0	Titanium tetrachloride	0.1	
007784-42-1	Arsine	10	
009014-01-1	Subtilisin, fermentation product	NA*	
029082-74-4	Octachlorostyrene	NA*	Yes
	Arsenic compounds	1	
	Beryllium compounds	1	
	Brominated Flame Retardants**	100	Yes
	Cadmium compounds	[25] 1	Yes
	Chromium compounds	250	
	Chromium (VI) compounds	0.1	
	Diisocyanate compounds	100	
	Lead compounds	5	Yes
	Manganese compounds	10	
	Mercury compounds	5	Yes

CAS Number	Contaminant Name	Mass Emission Limit (pounds per year)	PB Trigger Applicable
	Nickel compounds	10	
	Pesticide, herbicide, rodenticide, insecticide***	NA*	Yes
	Polycyclic organic matter (POM)	1	Yes
	Polytetrafluoroethylene (decomposition)	NA*	

\*These HTACs are not eligible for demonstrating compliance with a mass emission limit

\*\*Including but not limited to Polybrominated diphenyl ethers (PBDEs), Tetrabromobisphenol

A (TBBPA), Hexabromocyclododecane (HBCD)

\*\*\* Aldrin/Dieldrin (000309-00-2), Chlordane (000057-74-9 and 012789-03-6), DDE

(000072-55-9), DDT (000050-29-3), Heptachlor (000076-44-8), Isodrin (000465-73-6),

Methoxychlor (000072-43-5), Pendimethalin (040487-42-1),

Pentachlorobenzene (000608-93-5), (000079-94-7), Toxaphene (008001-35-2), Trifluralin

(001582-09-8)

Section 212-2.3 Degree of Air Cleaning Required

(a) Table 3 - Degree of Air Cleaning Required for Criteria Air Contaminants

Degree of Air Cleaning Required for Criteria Air Contaminants Gases and Liquid Particulate Emissions (Environmental Rating A, B, C or D) and Solid Particulate Emissions (Environmental Rating A or D)										
‘EMISSION RATE POTENTIAL (LBS/HR)’										
Environmental  Rating	Less  than 1	≥ 1  to  10	≥ 10  to  20	≥ 20  to  100	≥ 100  to  500	≥ 500  to  1,000	≥ 1,000  to  1,500	≥ 1,500  to  4,000	≥ 4,000  to  10,000	10,000  or  greater
A	NAAQS  *	99%								
B	NAAQS  *	90%	91%	94%	96%		97%	98%	99% or greater	
C	NAAQS  *	70%	75%	85%	90%		93%	95%	98% or greater	
D	NO AIR CLEANING REQUIRED									

\* Using air dispersion modeling demonstrate that the [maximum] offsite air concentration is less than the respective National Ambient Air Quality Standard reported as the design value of the criteria pollutant.



(b) Table 4 - Degree of Air Cleaning Required for Non-Criteria Air Contaminants

Degree of Air Cleaning Required for Non-Criteria Air Contaminants Gases and Liquid Particulate Emissions (Environmental Rating A, B, C or D) and Solid Particulate Emissions (Environmental Rating A or D)					
‘EMISSION RATE POTENTIAL’					
Environmental Rating	Less than 0.1 lbs/hr and lbs/yr ≤ PB trigger	≥ 0.1 to 1 lbs/hr or lbs/yr > PB trigger	≥ 1 to 10 lbs/hr	≥ 10 to 25 lbs/hr	Greater than 25 lbs/hr
A	Guideline Concentration*	90%	99%	99.5%	99.5%
B	Guideline Concentration*			90%	
C	Guideline Concentration*			75%	
D	NO AIR CLEANING REQUIRED				

\* Using air dispersion modeling demonstrate that the maximum offsite air concentration is less than the applicable AGC/SGC

#### Section 212-2.4 Control of particulate emissions released from existing process emission sources.

(a) Emissions from any process emission source for which an application was received by the department prior to July 1, 1973 are restricted as follows:

(1) No facility owner or operator shall cause or allow emissions of particulate that exceed 0.15 grains per cubic foot of exhaust gas, expressed at standard conditions on a dry gas basis, except in instances where the determination of the permissible emission rate using process weight for a specific source category emitting solid particulate is based upon Table 5 and Table 6 of Subdivisions 212-2.5 (a) and (b) of this Subpart.

(b) The control of particulate emissions released from new and modified process emission sources. Emissions from any process emission source for which an application was received by the department after July 1, 1973 are restricted as follows:

(1) No facility owner or operator shall cause or allow emissions of particulate that exceed 0.050 grains per cubic foot of exhaust gas, expressed at standard conditions on a dry gas basis, except in instances where determination of permissible emission rate using process weight for a specific source category emitting solid particulate is based upon Table 5 and Table 6 of Subdivisions 212-2.5(a) and (b) of this Subpart.

(c) Emissions of particulates shall be measured by using the emission testing method found in 40 CFR part 60 Appendix A-3 Method 5.

#### Section 212-2.5

(a) Table 5- Process Weight Source Categories

Process Operations for which Permissible Emission Rate is Based on Process Weight:	
a.	[Stone dryers (asphalt concrete plants)] <u>'Reserved'</u>
b.	Expanded aggregate kilns (lightweight aggregate plants)
c.	Continuous process material dryers emitting solid particulates and water only
d.	Brass and bronze melting furnaces
e.	Ferro alloy production furnaces
f.	Lime kilns
g.	Glass production furnaces
h.	Graphitizing and silicon carbide furnaces
i.	Gypsum dryers
j.	Primary aluminum reduction pot lines

(b) Table 6 - Permissible Emission Rate

Process weight per hour (lb/hr)	Permissible emission rate (lb/hr)	
	Existing emission source*	New emission source or modification
100	[0.51] <u>0.52</u>	[0.51] <u>0.52</u>
500	1.5	1.5
1,000	[2.4] <u>2.5</u>	[2.4] <u>2.5</u>
5,000	[6.8] <u>7.2</u>	[6.8] <u>7.2</u>
10,000	11. <u>5</u>	11. <u>5</u>
25,000	20. <u>2</u>	20. <u>2</u>
50,000	[32] <u>33.8</u>	[32] <u>33.8</u>

75,000	[42] <u>44.3</u>	[42] <u>44.3</u>
100,000	[51] <u>53.7</u>	[51] <u>53.7</u>
250,000	<u>58.1</u>	0.030 grain per standard cubic foot of undiluted exhaust gas on a dry basis
500,000	<u>64.4</u>	
750,000	<u>68.3</u>	
1,000,000	<u>71.1</u>	
2,000,000	<u>78.2</u>	
5,000,000	<u>88.2</u>	

\* Existing emission sources are ones for which applications for permits were received prior to July 1, 1973

To determine values of permissible emission rate not shown in table:

For all process weight sources up to 100,000 lb/hr, use  $E = 0.024P^{0.67}$

For existing process weight sources in excess of 100,000 lb/hr, use

$E = (39P^{0.082}) - 50$  where E = permissible emission rate; P = process weight in lb/hr.

## SUBPART 212-3

### REASONABLY AVAILABLE CONTROL TECHNOLOGY FOR MAJOR FACILITIES

#### Section 212-3.1 Reasonably Available Control Technology for Major Facilities

(a)(1) Owners and/or operators of facilities located in the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury or New York City metropolitan area with an annual potential to emit of 25 tons or more of NO<sub>x</sub> or 25 tons or more of VOCs must comply with the requirements of this section.

(2) Owners and/or operators of facilities located outside of the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury and New York City metropolitan area with an annual potential to emit of 100 tons or more of NO<sub>x</sub> or 50 tons or more of VOCs must comply with the requirements of this section.

(3) Owners and/or operators of facilities located in the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury or New York City metropolitan area with an annual potential to emit of 25 tons or more of nitrogen oxides or facilities located outside of the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury or New York City metropolitan area with an annual potential to emit 100 tons or more of nitrogen oxides may petition the EPA for an exemption from the RACT requirements for NO<sub>x</sub> emission points in this section. The facility is eligible for the exemption if the owner and/or operator demonstrates that net ozone air quality benefits are greater in the absence of reductions of NO<sub>x</sub> from the facility. Nothing in this paragraph shall exempt owners and/or operators of facilities that petition the Environmental Protection Agency for an exemption from complying with the applicable requirements of this section by the May 31, 1995 deadline absent approval of the exemption.

(b) Owners and/or operators of emission points subject to this Part that emit NO<sub>x</sub> or VOCs located at facilities described in Subdivision (a) of this Section must submit a compliance plan to the department by October 20, 1994. The compliance plan must either include the RACT analysis required by Subdivision (c) of this Section or a plan to limit the annual potential to emit below the applicability levels pursuant to Subdivision (d) of this Section.

(c)(1) The compliance plan must identify RACT for each emission point that emits NO<sub>x</sub> for major NO<sub>x</sub> facilities or VOC for major VOC facilities. The compliance plan must identify the emission points that do not employ RACT, and a schedule for implementation of RACT must be included in the plan. A RACT analysis is not required for emission points with NO<sub>x</sub> and VOC emission rate potentials less than 3.0 pounds per hour and actual emissions in the absence of control equipment less than 15.0 pounds per day at facilities located in the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury and New York City metropolitan area. A RACT analysis is not required for emission points with NO<sub>x</sub> and VOC emission rate potentials less than 3.0 pounds per hour at facilities located outside of the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury and New York City metropolitan area. RACT as approved by the department must be implemented on each emission point subject to this section by May 31, 1995.

(2) Compliance plans that include construction of emission control equipment must include a milestone date no later than December 20, 1994 for submission of a permit to operate to the department for emission control equipment. The compliance plans must include milestone dates for commencement of construction, completion of construction, and completion of emissions testing of emission control equipment.

(3) RACT compliance plans for NO<sub>x</sub> emission points must include technically feasible control strategies to minimize NO<sub>x</sub> formation and emission control equipment alternatives. These process specific RACT demonstrations that are acceptable to the department will be submitted to the United States Environmental Protection Agency for approval as a revision to the State Implementation Plan by the department.

(4)(i) VOC emission points that are equipped with a capture system and a control device with an overall removal efficiency of at least 81 percent are equipped with reasonably available control technology.

(ii) Surface coating processes that are not subject to Part 228 of this Title which use a surface coating with a maximum VOC content of 3.5 pounds VOC per gallon as applied (minus water and excluded VOC) as calculated according to the formula in Section 228.2(b)(11) of this Title are equipped with RACT.

(iii) Where the facility owner or operator can show to the satisfaction of the department that an emission point cannot achieve an overall removal efficiency of 81 percent or use coatings not exceeding 3.5 pounds VOC per gallon as applied (minus water and excluded VOC) for reasons of technological or economic feasibility, the department may accept a lesser degree of control upon submission of satisfactory evidence that the facility owner or operator will apply reasonably available control technology. These process specific RACT demonstrations that are acceptable to the department will be submitted to the EPA for approval as a revision to the State Implementation Plan by the department.

(d) The owner or operator of any facility with federally and state enforceable conditions in a permit to operate that limits its annual potential to emit NO<sub>x</sub> and VOCs below the applicability levels of Subdivision (a) of this Section by May 31, 1995 is exempt from the RACT analysis and implementation requirements of this Section. Records must be maintained by the owner or operator at the facility on a monthly basis which verify the facility's annual actual emissions. Upon reasonable request, these records must be submitted to the department in a format acceptable to the department. An exceedance of the annual potential to emit conditions for any calendar year must be reported by the owner or operator to the department within 30 days of the end of that calendar year.

(e) Any facility that is subject to this section after May 31, 1995 will remain subject to these provisions even

if the annual potential to emit NO<sub>x</sub> or VOCs later fall below the applicability threshold.

(f) Owners and/or operators of emission points located at facilities described in Subdivision (a) of this Section that commence construction after August 15, 1994 must submit a RACT demonstration for nitrogen oxides and VOC emissions with each application for a permit to operate. RACT must be implemented on these emission points when operation commences. A RACT analysis is not required for new emission points with NO<sub>x</sub> and VOC emission rate potentials less than 3.0 pounds per hour and actual emissions in the absence of control equipment less than 15.0 pounds per day at facilities located outside of the Lower Orange County towns of Blooming Grove, Chester, Highlands, Monroe, Tuxedo, Warwick, and Woodbury and New York City metropolitan area.

#### SUBPART 212-4

#### CONTROL OF NITROGEN OXIDES FOR HOT MIX ASPHALT PRODUCTION PLANTS

##### Section 212-4.1 Control of nitrogen oxides for hot mix asphalt production plants

(a) The owner or operator of a hot mix asphalt production plant must comply with the following requirements:

(1) Beginning in calendar year 2011, a tune-up must be performed on the dryer burner on an annual basis at any hot mix asphalt production plant that is in operation during that calendar year.

(2) A plan must be submitted to the department by March 1, 2011 that details the introduction or continuation of methods by which to reduce the moisture content of the aggregate stockpile(s). Such methods must be implemented that year, or the first subsequent year the plant is in operation.



(b)(1) Beginning January 1, 2012, the owner or operator of a hot mix asphalt production plant must analyze the economic feasibility of installing a low NO<sub>x</sub> burner when it comes time for the current burner to be replaced. This economic analysis must follow an approach acceptable to the department.

(2) By January 1, 2020, all owners or operators of active plants must have submitted the economic feasibility analysis for the installation of a low NO<sub>x</sub> burner. A low NO<sub>x</sub> burner must be installed for that operating year in all instances in which it proves feasible.

(3) Hot mix asphalt production plants that are in a state of inactivity on January 1, 2020 and have not otherwise complied with the requirements of this subdivision by that date must do so prior to continued operation.

(4) A similar analysis must be submitted for subsequent burner replacements.

(5) A low NO<sub>x</sub> burner is required at any new hot mix asphalt production plant.

(c) For major stationary sources, approved RACT determinations will be submitted by the department to the EPA for approval as separate State Implementation Plan revisions.



# ENB Statewide Notices 2/10/2021

## Public Notice

### Notice of Adoption

**6 NYCRR Part 200, General Provisions**

**6 NYCRR Part 201, Permits and Registrations**

**6 NYCRR Part 212, Process Operations**

**6 NYCRR Part 621, Uniform Procedures**

**Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 70-0109, 71-2103, and 71-2105 of the ECL, and Sections 501-507 (Title V) of the Clean Air Act (CAA or Act), the New York State Department of Environmental Conservation (NYS DEC) hereby gives notice of the following:**

NYS DEC is adopting revisions to its Operating Permitting Program (OPP). The OPP sets forth the regulatory requirements and procedures to allow owners and operators of an air contamination source to apply for and obtain a permit or registration from NYS DEC for the construction and operation of the source in New York. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by NYS DEC through Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this rulemaking will modify 6 NYCRR Section 212-2.2, Table 2 - High Toxicity Air Contaminant (HTAC) list, to make it consistent with Table 1 of Subpart 201-9. Finally, this rulemaking will make several minor changes to 6 NYCRR Part 212 to improve the clarity of its requirements. The scope of the existing Part 201 will not be changed as a result of this rulemaking.

Documents pertaining to this [rulemaking](https://www.dec.ny.gov/regulations/propregulations.html#public) can be found on the NYS DEC's website at <https://www.dec.ny.gov/regulations/propregulations.html#public>.

Due to the unprecedented nature of COVID-19, Governor Cuomo issued a PAUSE Order directing non-essential meetings/gatherings to be suspended or cancelled. See Executive Order 202 and subsequent additions, including Executive Order 202.15 which specifically addressed the suspension of public hearing requirements. Pursuant to these directives, NYS DEC did not schedule or hold any public hearings for this rulemaking.

**Requests for information related to the SIP revision may be obtained from:** Robert D. Bielawa, NYS DEC - Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

**Request for information related to the proposed revisions to Part 201 and Part 212, may be obtained from:** Mark Lanzafame, NYS DEC - Division of Air Resources, 625 Broadway, Albany NY 12233-3251, Phone: (518) 402-8403, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)



9.5(e)(7) which is referenced in section 231-9.5(g)(v). It was determined that repeating that requirement was unnecessary.

Comment 9: EPA recommends including a definition for the term “RACT [Reasonably Available Control Technology] variance” which is used in the newly added provision at section 231-10.3(c) or indicate other New York air regulations that define the term RACT variance. (Commenter 1)

Response to Comment 9: The term “RACT variance” has been replaced with a reference to a source specific RACT determination in 231-10.3(b)(2)(i)(c’).

Comment 10: Two scenarios or provisions where there is a reasonable possibility that a project that is not part of a major modification (where an insignificant modification occurs), which were included in the State Implementation Plan (SIP) approved Part 231 version, were removed from the proposed revised Part 231 version. Thus, please provide a justification for removing the two provisions, and a demonstration that the revised section 231-11.2 of the proposed Part 231 is at least as stringent as the federal PSD regulations. (Commenter 1)

Response to Comment 10: The applicability of the reasonable possibility requirements has not changed. The prior version of section 231-11.2(b) stated that it was applicable to a modification that did not exclude emissions and was less than 50 percent of the threshold or to a modification that did exclude emissions and, when those emissions were added to the project’s emissions, was less than 50 percent of the threshold. In either case, it is only applicable if emissions are less than 50 percent of the threshold. Therefore, there is no need to distinguish the two scenarios. Thus, only one scenario was proposed that covered both projects that exclude emissions and those that do not. The language in section 231-11.2(c) was revised in a similar way.

Comment 11: EPA would like to bring to the Department’s attention that the PM-2.5 annual average Significant Impact Level (SIL) value of 0.3 µg/m<sup>3</sup> has been modified by EPA for attainment areas. However, in 2013, due to a lawsuit from the Sierra Club, the D.C. Circuit vacated and remanded in part the PM-2.5 SIL. EPA thereafter did more evaluation and analyses and recommended a value of 0.2 µg/m<sup>3</sup> for the annual SIL. An April 17, 2018 guidance document from EPA notes that States may use other values up to 0.3 µg/m<sup>3</sup>. (Commenter 1)

Response to Comment 11: The Department is aware of the April 17, 2018 guidance and has determined that the PM-2.5 SIL value of 0.3 µg/m<sup>3</sup> is still valid for New York State.

Comment 12: The proposed Part 231 does not include a SIL for ozone. However, since in practice New York State does not have any ozone attainment areas (due to the ozone transport region) it may not be relevant at this time. (Commenter 1)

Response to Comment 12: The Department agrees that a SIL for ozone is not relevant until such time that ozone is treated as an attainment contaminant in New York State.

Comment 13: Regarding the added text in section 231-12.7 “Significant impact levels for facilities located in attainment areas” of the proposed Part 231 that says, “the lesser of” and “or the difference between the NAAQS [National Ambient Air Quality Standard] and background concentration for that regulated NSR [New Source Review] contaminant” are incorrect and should be removed. The text was correct without the additions. (Commenter 1)

Response to Comment 13: It is the Department’s determination that ambient concentrations should remain below the NAAQS whenever possible. Therefore, since a project’s maximum impact could be below an applicable SIL but still cause an ambient concentration greater than the NAAQS when added to the background concentration, the proposed revision was added to guard against this possibility.

Comment 14: Table 5 of section 231-13.5 should include a major facility threshold for GHGs of 75,000 tpy of CO<sub>2</sub>e, so that it will be consistent with section 231-4 (b)(50) ‘Subject to regulation’ that states that a new major facility with a potential to emit of 75,000 tpy of CO<sub>2</sub>e, which is major for a regulated NSR contaminant other than GHGs, is major for GHGs. (Commenter 1)

Response to Comment 14: Since GHGs alone are no longer considered in determining if a facility or project is subject to PSD, there is no representative major facility threshold for GHGs. Once one regulated NSR contaminant exceeds an applicable threshold in section 231-13.5, emissions for all other regulated NSR contaminants are compared to the values in section 231-13.6 which includes the 75,000 ton threshold for GHGs.

Comment 15: Based on our review, Part 231 does not establish that 40 tpy of sulfur dioxide (SO<sub>2</sub>) or oxides of nitrogen (NO<sub>x</sub>) represent significant emissions or significant net increases for PM-2.5 emissions. Thus Part 231 should be revised to address this issue. (Commenter 1)

Response to Comment 15: Section 231-13.6 Table 6 has been revised to list SO<sub>2</sub> and NO<sub>x</sub> as precursors to PM-2.5 with 40 tpy thresholds.

Comment 16: While the term potential to emit is used in several places within Part 231, there is no definition of potential to emit included in Part

231. We recommend either including a potential to emit definition in Subpart 231-4 or referring to other New York State regulations which include such definition. (Commenter 1)

Response to Comment 16: The term potential to emit is not specific to Part 231 and is defined at section 200.1(b).

Comment 17: While Part 231 refers to “project threshold” and “significant project threshold” in several places, Part 231 does not define these terms. We recommend revising Subpart 231-4 by including definitions for “project threshold” and “significant project threshold”. (Commenter 1)

Response to Comment 17: Tables in Subpart 231-13 are included for the various significant project thresholds and are referenced throughout Part 231. The Department has determined that no additional definitions are necessary.

Comment 18: Part 231 refers to the following terms: emission source, existing emission source, and new emission source in various provisions; however, it appears that these terms were not defined in Part 231. (Commenter 1)

Response to Comment 18: The term emission source is not specific to Part 231 and is defined at section 200.1(f). The terms existing and new do not have any special meaning for Part 231. If a source is at the facility prior to a modification, it is existing; if it is added in a modification, it is new. Similarly, if a facility is already permitted, it is existing; if it has never been permitted, it is new.

Comment 19: Based on our review, the criteria at 40 CFR § 52.21(b)(23)(iii) related to Class I areas was omitted from, both, the SIP approved Part 231 version and proposed Part 231 revisions. The Department should add this provision to Part 231 or provide justification why this provision should not be included in Part 231. (Commenter 1)

Response to Comment 19: There are no Class I areas located within 10 kilometers of New York State. Therefore, that provision is not applicable.

## NOTICE OF ADOPTION

### Above Referenced Parts Make Up the Department’s Operating Permit Program

**I.D. No.** ENV-17-20-00005-A

**Filing No.** 76

**Filing Date:** 2021-01-26

**Effective Date:** 30 days after filing

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Parts 200, 201, 212 and 621 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 70-0109, 71-2103 and 71-2105; Clean Air Act, sections 501-507

**Subject:** Above referenced Parts make up the Department’s operating permit program.

**Purpose:** The purpose of this rulemaking is to improve the clarity and consistency of the Department’s operating permit program.

**Substance of final rule:** The New York State Department of Environmental Conservation (Department) is proposing to revise its Operating Permit Program as set forth in Title 6 of the Official Compilation of Codes, Rules, and Regulations of the State of New York (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; 212, Process Operations; and 621, Uniform Procedures (collectively, Part 201).

The proposed revisions to Part 200 revise the definition of ‘emergency power generating stationary internal combustion engine’ to allow operation for more than 500 hours during a declared state disaster emergency as defined under Section 28 of the New York State Executive Law. It also modifies the definition of ‘combustion installation’ and adds the definitions of ‘fossil fuel’ and ‘furnace’, which are being removed from Paragraph 201-2.1(b).

The proposed revisions to Part 621 correct minor language inconsistencies in Subdivision 621.4(g). The renewal application deadlines specified in Paragraph 621.11(a)(1) are being revised to be consistent with Part 201. Finally, the language of Subdivision 621.11(i) is being revised to be consistent with Part 201.

Subdivision 621.4(g) is revised to remove an outdated reference to 6 NYCRR Part 215. Subparagraph 621.4(g)(2)(ii) is revised to refer to air state facility permits and correct a reference to Part 201. Clauses 621.4(g)(2)(v)(‘a’) and 621.4(g)(2)(v)(‘b’) are deleted. Paragraph 621.11(a)(1) is revised to clarify the renewal application deadlines for air state facility, Title V facility, and Title IV facility permits. Subdivision 621.11(i) is revised to clarify the public noticing requirements for air permits containing emission caps.

Subdivision 212-1.4(a) is revised to clarify its requirements. Subdivision 212-1.4(k) is revised to address toxic emissions from the iron and steel industry. Paragraph 212-1-5(e)(2) is revised to include an alternative toxic impact assessment method. Table 2 in Section 212-2.2 is revised to be consistent with Table 1 in Subpart 201-9 and to reflect the latest toxicological information. Table 6 in Subdivision 212-2.5(b) is revised to show permissible emission rates consistent with the formula presented in that Subdivision.

Subdivision 201-1.2(b) is revised and reworded to more clearly state its requirements. Sections 201-1.4, 201-1.5, 201-1.11, 201-1.12, and 201-1.13 are revised to more clearly state their requirements. Finally, a new Section 201-1.16 is added to specify certain criteria that owners or operators of research and development activities must meet to qualify for exemption from permitting requirements.

The definition of 'emergency' in Paragraph 201-2.1(b)(12) is revised to more clearly indicate situations that qualify as an emergency under Part 201. Paragraphs 201-2.1(b)(16) and 201-2.1(b)(17) are repealed and reserved. An extraneous sentence is removed from Paragraph 201-2.1(b)(20) to clarify its meaning. References to greenhouse gas emissions are removed from Paragraph 201-2.1(b)(21). Paragraph 201-2.1(b)(22) is revised to more clearly indicate situations that qualify as a malfunction under Part 201. Paragraph 201-2.1(b)(23) is repealed and reserved. Paragraph 201-2.1(b)(24) is revised to indicate that portable emission sources that remain at the same facility for 12 consecutive months will be treated as stationary emission sources. Paragraph 201-2.1(b)(26) is revised to include registrations. Paragraph 201-2.1(b)(29) is revised to more clearly indicate what qualifies as a temporary emission source. Finally, Paragraphs 201-2.1(b)(30), 201-2.1(b)(31), and 201-2.1(b)(32) are repealed.

Section 201-3.1 is revised to clarify its requirements and intent. Paragraph 201-3.2(c)(1) is revised to clarify the specific types of combustion installations that qualify for exemption. Paragraph 201-3.2(c)(6) is revised to remove engine test cells from the exempt activity. Paragraph 201-3.2(c)(13) is revised to clarify the emissions threshold for exempt graphic arts facilities. Paragraph 201-3.2(c)(21) is revised to remove liquid asphalt storage tanks from the exempt activity and add biodiesel storage tanks. Paragraph 201-3.2(c)(25) is revised to add liquid asphalt storage tanks to the exempt activity. Paragraph 201-3.2(c)(29) is revised to clarify which types of crushing operations qualify for exemption. Paragraph 201-3.2(c)(36) is revised to exclude plastic extrusion processes using halogenated polymers from the exempt activity. Paragraph 201-3.2(c)(40) is revised to clarify that laboratory operations producing commercial quantities of materials are not considered to be exempt. Paragraph 201-3.2(c)(44) is repealed and reserved. Paragraph 201-3.2(c)(46) is revised to include natural gas and methane fuel cells as an exempt activity. A new Paragraph 201-3.2(c)(49) is added to list covered manure storage exhausting to a flare or other appropriate control device as an exempt activity. A new Paragraph 201-3.2(c)(50) is added to list coffee roasting processes with a maximum operating capacity of less than 25 tons per year of green coffee beans as exempt activities. A new Paragraph 201-3.2(c)(51) is added to list process emission sources at breweries with total beer and malt liquor production less than 60,000 barrels per year as exempt activities. A new Paragraph 201-3.2(c)(52) is added to list process emission sources at wineries with total wine and brandy production less than 700,000 gallons per year as exempt activities. A new Paragraph 201-3.2(c)(53) is added to list process emission sources at distilleries with less than 10,000 distiller's bushels of grain input per year as exempt activities. A new Paragraph 201-3.2(c)(54) is added to list process emission sources at lumber drying kilns with an annual throughput of untreated wood less than 275,000 board feet as exempt activities.

Paragraph 201-3.3(c)(8) is revised to include nail salons as a trivial activity. Paragraph 201-3.3(c)(28) is repealed and replaced with an activity that applies to sub-slab depressurization systems. Paragraph 201-3.3(c)(29) is revised to clarify its intent. Paragraph 201-3.3(c)(30) is revised to clarify its intent. Paragraph 201-3.3(c)(41) is revised to remove tub grinders and construction and demolition waste crushers from the trivial activity. It is also revised to specifically exclude construction and demolition waste crushers and automotive and scrap metal shredding operations from the trivial activity. Paragraph 201-3.3(c)(63) is revised to more clearly indicate that the trivial activity does not apply to surface coating operations at woodworking facilities. Existing Paragraph 201-3.3(c)(84) is repealed and replaced with new language indicating that laser and plasma cutters and trimmers using appropriate emission control devices that do not emit hazardous air pollutants are considered trivial activities. Paragraph 201-3.3(c)(85) is repealed and reserved.

Paragraph 201-4.1(a)(2) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. Further, Paragraph 201-4.1(a)(2) is revised to more clearly indicate that emissions of high toxicity air contaminants from combustion sources and exempt and trivial activities are not included in the facility

wide total when determining air facility registration applicability. Subdivision 201-4.2(d) is revised to more clearly indicate that an air facility registration must be issued by the Department prior to the commencement of construction of a new or modified facility or emission source. Subdivision 201-4.2(e) is revised to preserve an existing reference to the effective date of the 2013 revisions made to Subpart 201-4. Subdivision 201-4.2(f) is revised to indicate that the Department may withdraw or revoke air facility registrations in a manner that is consistent with the procedures set forth in 6 NYCRR Part 621. Paragraph 201-4.3(a)(1) is revised to more clearly state the identification information that must be provided with registration applications. Paragraph 201-4.3(a)(5) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. Subdivision 201-4.4(a) is repealed. Subdivision 201-4.4(b) is renumbered as Subdivision 201-4.4(a) and revised to include a permit transfer application as part of the material that must be submitted following a change in facility ownership. Subdivision 201-4.5(a) is repealed and replaced with a new Subdivision 201-4.5(a) that more clearly states the purpose and applicability of cap-by-rule. Paragraph 201-4.5(j)(1) is renumbered as Subdivision 201-4.5(k).

Paragraph 201-5.1(a)(3) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. Further, Paragraph 201-5.1(a)(3) is revised to more clearly indicate that emissions of high toxicity air contaminants from combustion sources and exempt and trivial activities are not included in the facility wide total when determining state facility permit applicability. Existing Subdivision 201-5.1(b) is revised to more clearly state that construction or modification may not commence until a state facility permit is issued by the Department. Paragraph 201-5.2(b)(8) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. A new Subdivision 201-5.2(d) is added to state that renewal applications for state facility permits containing emissions caps are subject to public noticing requirements as described in 6 NYCRR Part 621. Subdivision 201-5.3(b) is revised to clarify which state facility permits are subject to recall as described in the Subdivision. Existing Section 201-5.4 is repealed and replaced with a new Section 201-5.4 that changes the modification procedures for state facility permits. The new Section 201-5.4 differentiates between significant and minor state facility permit modifications and establishes the necessary procedures for their review and issuance. Section 201-5.4 also describes appropriate procedures for certain changes at facilities holding a state facility permit that may be made without a permit modification in certain situations and following appropriate advance notification procedures. Finally, Section 201-5.4 allows the Department to require a permit modification for changes that would otherwise be subject to the advance notification provisions if an adverse environmental impact exists.

Subdivision 201-6.1(a) is revised to more clearly indicate that the described facilities may not be constructed or operated without first obtaining a Title V permit. Paragraph 201-6.2(a)(2) is revised to require the submission of a complete application prior to the commencement of construction of new or modified emission units that would make an existing facility subject to Title V permitting requirements. Paragraph 201-6.2(a)(2) is further revised to require the submission of a Title V permit application within one year of the commencement of operation of the new or modified emission units if the facility was issued an air state facility permit to construct. Subparagraph 201-6.2(d)(3)(i) is revised to replace the reference to 'persistent, bioaccumulative, and toxic compounds' with 'high toxicity air contaminants'. Subparagraph 201-6.4(c)(3)(i) is revised to require that electronic monitoring reports be submitted in a format acceptable to the Department. Existing Subdivision 201-6.4(f) is repealed and replaced with a new Subdivision 201-6.4(f) that more clearly describes operational flexibility requirements for Title V permits. The new Subdivision 201-6.4(f) outlines the procedures facility owners and operators must follow to establish alternate operating scenarios and operational flexibility protocols should they choose to do so. Subdivision 201-6.5(c) is revised to reference the emergency defense provisions of Section 201-1.5 as they are better described at that Section.

Subdivision 201-7.1(c) is revised to more clearly describe the information that must be included in applications proposing one or more emissions caps.

Existing Subpart 201-9 is repealed and replaced to be consistent with Table 2 in 6 NYCRR Part 212-2.2.

A new Subpart 201-10 is added to include a severability clause for Part 201.

**Final rule as compared with last published rule:** Nonsubstantial changes were made in sections 200.1(db), (dc), 201-4.1(a)(2), 201-5.1(a)(3), 212-1.2 and 212-1.4(k).

**Text of rule and any required statements and analyses may be obtained from:** Mark Lanzafame, P.E., NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3254, (518) 402-8403, email: air.regs@dec.ny.gov



**Additional matter required by statute:** Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form and a Coastal Assessment Form have been prepared and are on file.

### Summary of Revised Regulatory Impact Statement

The New York State Department of Environmental Conservation (Department) is proposing revisions to its Operating Permitting Program (OPP). The OPP sets forth the regulatory requirements and procedures for owners and operators of air contamination sources applying for and obtaining a permit or registration from the Department for the construction and operation of the source. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by the Department through Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this proposal will modify 6 NYCRR Section 212-2.2, Table 2 – High Toxicity Air Contaminant (HTAC) list, to be consistent with Table 1 of Subpart 201-9. Finally, this proposal will also make minor changes to 6 NYCRR Part 212 to improve the clarity of its requirements.

#### 1. STATUTORY AUTHORITY

The statutory authority for these regulations is found in Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0302, 19-0303, 19-0305, 19-0311, 70-0109, 71-2103, and 71-2105 of the ECL, and Sections 501-507 (Title V) of the Clean Air Act (CAA or Act).

#### 2. LEGISLATIVE OBJECTIVES

The CAA Amendments of 1990 established federal standards for state OPPs in order to fulfill the Act's environmental protection goals. Title V established standard requirements for state OPPs to ensure that major sources of air pollution complied with the requirements of the Act, along with any federal standards promulgated by EPA (Environmental Protection Agency) to protect air quality. Title V requires states to establish a permit program implementing the requirements of the Act and requires EPA to review and approve the program. The OPP must address both large and small sources of air pollution and provide a basis for implementing and enforcing federal and state regulations.

Articles 1 and 3 of the ECL define the legislative policy objective of reducing air pollution and providing clean air for the citizens of New York and provide authority for the Department to adopt and enforce regulations to accomplish these objectives. Additionally, Article 19 of the ECL was enacted to safeguard the air quality of the state from pollution, ensure the protection of public health and the welfare of the people of the State and, to that end, require the use of all available practical and reasonable methods to prevent and control air pollution in the State. In furtherance of these objectives, ECL Article 19 grants specific powers and duties to the Department, including the authority to promulgate regulations requiring sources of air pollution to obtain permits and registrations from the Department and the authority to control and abate new and existing sources of air pollution.

#### 3. NEEDS AND BENEFITS

##### Need for Revisions to the OPP

In 2013, the Department adopted revisions to Part 201 which updated its requirements, improved its clarity and consistency, and made the air permitting process easier to implement. Despite the overall success of this rulemaking, the Department identified items that need additional clarification. The Department has received feedback from the regulated community regarding ways to improve implementation of Part 201. Accordingly, the Department is proposing to amend Parts 200, 201, 212, and 621 to ensure that the OPP is as efficient and up to date as possible, and that it is implemented consistently across the state.

##### Benefits of Air Permitting Program Revisions

Adopting the proposed revisions will allow the Department to further streamline the air permitting process and provide clarity to the requirements. As a result, the OPP will become more efficient and easier to implement, thus reducing the compliance burden on both the Department and regulated facilities. In addition, this proposal will allow the Department to better fulfill its mandate to protect the citizens and environment of the state by updating the list of HTACs to be consistent with the most recent toxicological data.

##### Proposed Amendments to Part 200

The Department is proposing to amend Part 200.1(cq) by revising the definition of 'emergency power generating stationary internal combustion engine' to allow emergency engines to operate more than 500 hours per year during a declared state of emergency. The Department did not intend to prohibit the operation of these engines during such an emergency. The Department is also proposing to amend Part 200.1(l) by revising the definition of 'combustion installation' to add "other solid, liquid, and gaseous fuels" to those listed. The Department is also proposing to relocate the

definitions of the terms 'fossil fuel' and 'furnace' from Subpart 201-2 to Part 200.1.

##### Proposed Amendments to Part 621

Subdivision 621.4(g) will be revised to provide clarity and conform these provisions with the requirements of Part 201. Specifically, the proposed revisions will correct several minor inconsistencies in regulatory citations and language making it easier to understand and implement.

In addition, the proposal will correct an inconsistency with the renewal provisions for air state facility permits. Existing Paragraph 621.11(a)(1) states that renewal applications for non-major (i.e. state facility) air permits are due no later than 30 days prior to the expiration date of the permit. This is inconsistent with Subdivision 201-5.2(c), which states that renewal applications for state facility permits must be submitted no later than 180 days prior to the expiration date of the permit. It is the Department's intent that renewal applications for state facility permits be submitted as described in Subdivision 201-5.2(c).

##### Proposed Amendments to Part 201

Minor language revisions throughout Part 201 are being proposed. Further, the definitions of 'permit shield', 'Title V facility permit', 'Title V facility permit modification', and 'Title V facility permit revision' are being removed as those terms are more clearly described elsewhere within Part 201.

The proposal will add a new Section 201-1.16 addressing research and development (R&D) activities. These activities are currently exempt from permitting in situations where products are not being produced for commercial sale. An increase in R&D activities being conducted throughout the State necessitates a more thorough review of these activities and their emissions.

Several exempt and trivial activities will be updated to make it easier to determine whether an emission source qualifies for exemption. The Department is proposing a new exempt activity that applies to wood and lumber drying kilns processing 275,000 board feet or less of untreated wood on an annual basis. The Department is also proposing a new exempt activity that applies to coffee roasting processes with a maximum operating capacity of 3 kilograms or less per batch and 25 tons or less per year of green coffee beans. The proposed revisions also include three new exempt activities for certain small beverage alcohol production facilities. Finally, a new exemption for covered manure storage exhausting to a fan is proposed.

The proposed revisions to Section 201-3.2 will reduce the maximum size for exempt liquid asphalt storage tanks from 300,000 barrels (12,600,000 gallons) to 10,000 gallons and add biodiesel storage tanks to the exempt activity.

Finally, the Department is proposing to revise a trivial activity that applies to certain solid waste handling operations. This activity was revised during the 2013 revisions to Part 201 to include tub grinders and construction and demolition waste crushers. It has become clear that both activities can be a significant source of nuisance dust and are therefore not appropriately classified as trivial activities.

Subdivision 201-4.5(a) will be clarified. The Department does not intend to prevent facility owners or operators from registering because they cannot cap-by-rule to avoid a state VOC RACT regulation. Such a facility could cap-by-rule in order to avoid major facility status while still complying with VOC RACT requirements.

Section 201-5.2 will be amended to state that state facility permits containing emissions caps must be publicly noticed when they are renewed or modified.

The modification procedures for state facility permits will be restructured. These new provisions mirror the modification provisions for Title V facility permits by addressing significant and minor modifications, allowing the Department to act more quickly on certain modification applications. Proposed Section 201-5.4 also includes provisions for changes that can be made at permitted facilities without a permit modification.

Subdivision 201-6.4(f) outlines the procedures for implementing operational flexibility at Title V facilities. This section will be revised to clarify its intent and simplify implementation.

The group of compounds listed as persistent, bioaccumulative and toxic compounds will be renamed as HTACs in order to be consistent with Part 212. This change does not affect the requirements for calculating HTAC emissions when determining what type of permit is required for a facility. Additionally, the Department has reevaluated the list of HTACs based on the latest available data, resulting in several changes to the listed compounds.

##### Proposed Amendments to Part 212

The Department is proposing to update Table 2 – HTAC list, in Section 212-2.2 to be consistent with Table 1 in Subpart 201-9.

Subdivision 212-1.4(k) will be revised to address mercury and other toxic emissions from the iron and steel industry.

Paragraph 212-1.5(e) will be revised to simplify the toxic impact assessment requirements in certain situations.

Subdivision 212-2.5(a) will be revised to remove a duplicative entry from Table 5.

#### 4. COSTS

The Department does not anticipate any increase in costs to the regulated community as a result of this rulemaking. Affected facilities are already required to pay applicable fees, monitor operations, and operate pollution control equipment. Further, many of these facilities already employ the necessary staff required to complete these tasks. Any increase in costs to the regulated community due to the HTAC list changes is expected to be minimal.

An informal survey of facility owners and operators conducted in 1996 by the New York State Environmental Facilities Corporation (EFC) determined the average cost of applying for a minor facility permit in two different regions of the state: downstate and upstate. When updated to 2017 dollars, the costs for state facility permit and registration applications in the downstate region ranged from \$1,600 to \$7,700 per emission point. In the upstate region, these costs are estimated at \$1,900 to \$4,300. Some facilities may choose to hire a consulting firm to assist with this process. The Department estimates that the cost of hiring a consulting firm is approximately \$6,000.

#### 5. PAPERWORK

The proposed changes are not expected to increase the amount of paperwork required from affected facilities.

#### 6. LOCAL GOVERNMENT MANDATES

The proposed revisions do not create any local government mandates and are not expected to result in any additional burdens to State or local governments.

#### 7. DUPLICATION

The proposal does not duplicate any state or federal regulations or statutes. The final rule will conform to the requirements of the Act and the ECL.

#### 8. ALTERNATIVES

The only alternative to this proposal is to take no action, which will have several negative consequences. Confusing language will remain in the regulations, resulting in inconsistent implementation and a lengthier permitting process. The mass emission thresholds for HTACs will remain inconsistent with the current assessment of their relative risk, potentially requiring the owner or operator of a facility emitting these compounds to unnecessarily obtain a state facility permit at a greater cost.

#### 9. FEDERAL STANDARDS

The proposed revisions to Part 201 are consistent with federal standards and fulfill the Department's obligations under the Act.

The proposed revisions to Part 212 use federal NESHAP standards as a floor and build upon them to ensure that all air toxic emissions are appropriately regulated.

#### 10. COMPLIANCE SCHEDULE

The proposed revisions do not result in the establishment of any compliance schedules. The regulation will take effect 30 days after publication in the State Register.

#### *Revised Regulatory Flexibility Analysis*

The New York State Department of Environmental Conservation (Department) is proposing several revisions to its Operating Permitting Program (OPP). The OPP sets forth the regulatory requirements and procedures to allow owners and operators of an air contamination source to apply for and obtain a permit or registration from the Department for the construction and operation of such sources. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by the Department through Title 6 of the New York Compilation of Codes, Rules and Regulations (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this proposal will modify 6 NYCRR Section 212-2.2, Table 2 – High Toxicity Air Contaminant (HTAC) list, to make it consistent with Table 1 of Subpart 201-9. Finally, this proposal will also make several minor changes to 6 NYCRR Part 212 to clarify its requirements.

#### 1. EFFECT OF RULE

The proposed revisions to Part 201 are not expected to adversely affect small businesses and local governments. The owner or operator of an air emission source is required to obtain and comply with a permit or registration for that source. Small businesses and local governments are currently required to comply with this requirement under the existing Part 201. The proposed revisions will make the terms and conditions of Part 201 easier to understand and implement, simplifying the compliance process.

#### 2. COMPLIANCE REQUIREMENTS

Small businesses and local governments that own or operate a non-exempt stationary emission source are currently required to complete and file an appropriate permit or registration application for the construction

and operation of that facility. Once a permit or registration is issued, the facility owner or operator is required to comply with all terms and conditions of that permit or registration, and ensure that it accurately reflects facility operations. This requirement will not change as a result of these proposed revisions.

#### 3. PROFESSIONAL SERVICES

Small businesses and local governments are able to comply with the requirements of Part 201 without contracting with any professional services. In some cases, however, small businesses and local governments may choose to hire a private consulting firm to assist them with meeting their obligations under Part 201. The decision to employ a consulting firm is voluntary, and any associated costs are incurred at the discretion of the affected facility.

#### 4. COMPLIANCE COSTS

Compliance costs for small businesses and local governments are not expected to increase as a result of the proposed revisions. A more detailed analysis of the costs associated with this rulemaking is presented in the Regulatory Impact Statement.

#### 5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY

The proposed revisions to Part 201 do not contain any additional technological requirements for affected facilities. Also, the Department does not expect a significant change in the economic feasibility of Part 201 as a result of these revisions. Affected facilities are currently required to obtain permits and registrations from the Department. Several thousand facilities of various sizes are currently operating in compliance with Part 201 throughout the State. This is expected to continue after these proposed revisions are promulgated.

#### 6. MINIMIZING ADVERSE IMPACT

The proposed revisions to Part 201 are not expected to have an adverse impact on small businesses and local governments. New and existing facilities are already required to comply with the current version of Part 201, and the scope of the regulation is not changing as a result of the proposed revisions. These proposed revisions are intended to simplify the permitting process by making it easier to understand and more efficient.

To assist small businesses with environmental compliance, the Department provides free and confidential support through the Small Business Environmental Assistance Program (SBEAP), administered by the New York State Environmental Facilities Corporation. Interested facility owners and operators can contact SBEAP staff for free and confidential assistance filing permit and registration applications, as well as for advice and strategies for maintaining compliance with environmental regulations. This program provides small businesses with a cost saving option while ensuring that they are in compliance with the requirements of Part 201.

The proposed revisions will also add an alternative compliance option for facilities required to develop a Toxic Impact Assessment (TIA) pursuant to Paragraph 212-1.5(e)(2). This alternative compliance option would allow the facility owner or operator to demonstrate compliance with Part 212 by showing that the facility's emissions are below the applicable HTAC thresholds rather than by completing an air dispersion modeling analysis and TIA. As a result, the facility owner or operator would avoid the potentially high cost of performing the air dispersion modeling.

#### 7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

As stated above, small businesses and local governments are not expected to be directly affected by the proposed revisions to Part 201. The Department conducted stakeholder outreach to all facilities potentially affected by this proposal, including national and local associations and manufacturers, and have given stakeholders several opportunities to participate in the development of the proposed rule. Potentially affected entities, including those involved in small businesses and local governments, were given the opportunity to review and comment on the draft rulemaking in accordance with State rulemaking requirements, and all comments received were considered during the development of the proposed requirements.

#### 8. CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in this rulemaking. This proposal will not result in immediate violations or impositions of penalties for existing facilities.

#### 9. INITIAL REVIEW

The initial review of these rules shall occur no later than the third calendar year after the year in which it is adopted.

#### *Revised Rural Area Flexibility Analysis*

The New York State Department of Environmental Conservation (Department) is proposing several minor revisions to its Operating Permitting Program (OPP). The OPP sets forth the regulatory requirements and procedures to allow owners and operators of an air contamination source to apply for and obtain a permit or registration from the Department for the construction and operation of such sources. The OPP is authorized under Section 19-0311 of the New York State Environmental Conservation Law (ECL) and implemented by the Department through Title 6 of



the New York Compilation of Codes, Rules and Regulations (6 NYCRR) Parts 200, General Provisions; 201, Permits and Registrations; and 621, Uniform Procedures (collectively, Part 201). This rulemaking will revise Part 201 to clarify certain requirements, provide consistent implementation of the OPP across the state, streamline the air permitting process, and facilitate the ease of use and timely administration of the OPP. Additionally, this proposal will modify 6 NYCRR Section 212-2.2, Table 2 – High Toxicity Air Contaminant (HTAC) list, to make it consistent with Table 1 of Subpart 201-9. Finally, this proposal will also make several minor changes to 6 NYCRR Part 212 to improve the clarity of its requirements.

#### 1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

Part 201 applies to the owner or operator of any facility operating one or more stationary emission sources in New York State. Affected facilities range in scale from small industries with a handful of emission sources, to large scale industries with hundreds of emission sources. Affected facilities are located in communities throughout the state, including rural areas. The owner or operator of such a facility is already required to comply with the permitting and registration provisions of the existing Part 201. This proposal seeks to modify and update those provisions in order to make them easier to understand and implement. These changes are expected to result in increased efficiency at regulated facilities, potentially decreasing compliance costs. Accordingly, no adverse impacts on rural areas are anticipated due to this rulemaking.

#### 2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

Facility owners and operators that are subject to the requirements of Part 201 are required to obtain a facility permit or registration from the Department based on the facility's potential to emit. Once issued, the permit or registration contains terms and conditions that the facility owner or operator is required to adhere to in order to demonstrate continuous compliance with state and federal rules and regulations that apply to the operation of that facility. Part 201 applies to all facilities operating stationary emission sources, regardless of their location. The proposed revisions will increase the clarity and efficiency of the rule, making compliance easier and more efficient for facility owners and operators.

Owners and operators of facilities subject to Part 201 may choose to hire a private consulting firm to assist them with meeting their obligations under Part 201. The decision to employ a consulting firm is voluntary, and any associated costs are incurred at the discretion of the affected facility.

#### 3. COSTS

A detailed analysis of the costs for complying with the requirements of Part 201 can be found in the Regulatory Impact Statement for this rulemaking and is incorporated here. The annualized compliance costs and application preparation costs described in that analysis are expected to be comparable to those of affected facilities located in rural areas. The proposed revisions to Part 201 will increase the clarity and efficiency of the air permitting program, potentially leading to cost savings over the current regulation.

#### 4. MINIMIZING ADVERSE IMPACT

The Department does not anticipate any adverse impacts to rural areas as a result of this proposal. Permitting sources of air pollution regardless of ownership or location is necessary to ensure that they are operated in a way that protects the public health and the environment. In addition, the proposed revisions to Part 201 will make it easier for facility owners and operators to understand and comply with its requirements.

The proposed revisions will add a new exempt activity for covered manure storage systems equipped with fumes. These systems are becoming increasingly prevalent at farms statewide as part of an effort to reduce methane emissions from their operations. As an exempt activity, such a system would not be required to obtain an air facility registration or air pollution control permit, making it easier for interested farms to purchase and install such a system. Additionally, this proposed exemption will eliminate any air pollution control permitting costs associated with a cover and fume system.

The proposed revisions will also add an alternative compliance option for facilities required to develop a Toxic Impact Assessment (TIA) pursuant to Paragraph 212-1.5(e)(2). This alternative compliance option would allow the facility owner or operator to demonstrate compliance with Part 212 by showing that the facility's emissions are below the applicable HTAC thresholds rather than by completing an air dispersion modeling analysis and TIA. As a result, the facility owner or operator would avoid the potentially high cost of performing the air dispersion modeling.

#### 5. RURAL AREA PARTICIPATION

The Department conducted stakeholder outreach to all facilities potentially affected by this proposal, including those that are located in rural areas. Potentially affected entities, including those located in rural areas of the state, were provided the opportunity to review and comment on the draft rulemaking in accordance with State rulemaking requirements, and the Department considered all comments received during the formal comment period as it developed the revisions contained within this rulemaking.

#### Revised Job Impact Statement

The edits made to the Express Terms do not require any changes to the JIS.

#### Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2024, which is no later than the 3rd year after the year in which this rule is being adopted.

#### Assessment of Public Comment

##### Section 200.1 Definitions

1. Comment: The proposed language of paragraphs 200.1(cy) and 200.1(cz) appears to replace the existing definitions of 'stationary internal combustion engine' and 'stationary reciprocating internal combustion engine' with 'fossil fuel' and 'furnace', respectively. Commenter 2

Response to Comment 1: This is not intentional and has been addressed. This rulemaking will add the proposed definitions of 'fossil fuel' and 'furnace' to the end of the definitions listed in Section 200.1. No definitions in Section 200.1 are being removed.

##### Section 201-2.1 Definitions

2. Comment: The proposed language of paragraph 201-2.1(b)(22) defines 'malfunction' as "any sudden, infrequent, and not reasonably preventable failure of an air cleaning device or air contamination source to operate in compliance with all applicable Parts of this Title, not including failures that are caused entirely or partially by improper maintenance, careless operation, or other preventable conditions." Please provide clarification for the underlined portions of this proposed language. Commenter 2

Response to Comment 2: The owner or operator of an air contamination source and/or air cleaning device is generally required to operate and maintain that equipment in a manner that is consistent with good engineering practices, manufacturer's specifications, and all applicable requirements. However, equipment can fail unpredictably despite the best efforts of the owner or operator, causing or contributing to an exceedance of an emission standard or permit limit. In such situations, the owner or operator may wish to assert that a malfunction occurred when reporting the resulting noncompliance.

In general, failures that are reoccurring or due to negligent operation and maintenance of the equipment are not considered to be malfunctions. For example, if an engine fails because the operator neglected to change the crankcase oil at the maintenance interval specified by the manufacturer, it would not be considered a malfunction. Such a failure is 'reasonably preventable' because the engine would not have failed if the oil was changed at the proper intervals.

3. Comment: The proposed language of paragraph 201-2.1(b)(24) states that a portable emission source "shall be treated as a stationary emission source if it remains at the same facility for 12 consecutive months". Please clarify whether this applies to portable emission sources that are operated for 12 consecutive months or if it would apply to portable emission sources that are stored at a location for deployment to other facilities as needed. Commenter 2

Response to Comment 3: The proposed language of Paragraph 201-2.1(b)(24) considers whether the portable emission source was operated at the facility at any point during the previous 12 consecutive months. If the emission source was operated and it remained at the facility for 12 consecutive months, it would be treated as a stationary source for permitting purposes. Emission sources that are not operated at the facility where they are stored would not become subject to permitting as stationary sources.

##### Research and Development Activities

4. Comment: Clarification is needed on the determination of appropriate control devices for research and development activities. Commenter 1

Response to Comment 4: In general, the Department determines that control equipment is appropriate for a given emission source on a case-by-case basis. This determination considers factors such as any applicable requirements, the process being controlled, the emissions resulting from that process, and the technical feasibility of control equipment for that process. These determinations have been integral to the application of various exempt and trivial activities for decades and are also critical for other regulatory programs such as the evaluation and control of process operations under Part 212. The proposed language of Paragraph 201-1.16(a)(2) does not change the Department's existing approach to these determinations.

5. Comment: Facilities that exceed the major source thresholds in Paragraph 201-2.1(b)(21) should not be subject to proposed Paragraph 201-1.16(a)(3) because emissions from research and development activities will not have any effect on regulatory applicability. Commenter 1

Response to Comment 5: As discussed in the Regulatory Impact Statement, the Department has determined that it is appropriate and necessary for facilities to quantify emissions from research and development activities. The commenter suggests that major facilities are already required to obtain a Title V permit, and therefore that emissions exceeding

the major facility threshold would have no net effect on the facility's permit. However, this does not consider other potentially applicable regulatory programs such as the control of High Toxicity Air Contaminants pursuant to Part 212. Further, certain applicable requirements (e.g. National Emission Standards for Hazardous Air Pollutants (NESHAP)) apply to major and/or area sources of hazardous air pollutants regardless of their exemption status from Part 201. Accordingly, it is possible that an operation otherwise conducted for research and development is subject to a federal NESHAP and would need to be included in the facility's permit.

#### Operational Flexibility

6. Comment: We support the proposed reduction to the operational flexibility notification period from 30 days to 15 days. Commenter 1

Response to Comment 6: The Department thanks you for your comment.

#### Air State Facility Permit Modifications

7. Comment: Permit changes such as the removal of equipment or changes in the method of operation that result in less stringent monitoring, recordkeeping, or reporting requirements should not qualify as significant modifications. Commenter 1

Response to Comment 7: The proposed language of Subparagraph 201-5.4(b)(1)(ii) is intended to apply to physical changes or changes in the method of operation that result in less stringent monitoring, recordkeeping, or reporting requirements. If an emission source will be permanently shut down, the Department would not view that change as significant in most cases. Similarly, a permanent change in the method of operation for a given emission source such as permanently removing the capability to fire number 2 fuel oil from a dual fuel boiler would also not be considered significant.

The key to this concept is that the change is permanent, and the affected equipment will not be operated following the change. A change such as the removal of a control device where the previously controlled emission source will still be operated following the change would generally be considered significant. Similarly, changes in the method of operation of equipment that will still be operated following the change and that result in less stringent monitoring, recordkeeping, or reporting requirements would also generally be considered significant.

Department staff are available to discuss planned projects in advance of application submittal if the facility owner or operator is unsure whether a given change would be considered significant.

#### Malfunctions and Start-up/Shutdown Activities

8. Comment: It is unclear whether proposed subdivision 201-1.4(b) requires facilities to prepare a list of all theoretically possible maintenance and start-up/shutdown scenarios for each emission source in which an emission standard exceedance could potentially occur. If so, the creation of this list would be extremely burdensome and time consuming for large facilities. Commenter 1

Response to Comment 8: The proposed language of subdivision 201-1.4(b) requires the facility owner or operator to compile and maintain records of maintenance and start-up/shutdown activities only when they are expected to result in an exceedance of an applicable emission standard (i.e. when the maintenance or start-up/shutdown activity that is expected to result in the exceedance is imminent). The facility owner or operator need not prepare a list of possible scenarios in advance to demonstrate compliance with this requirement.

#### Air Facility Registration Modifications

9. Comment: The Department should allow facilities proposing modifications to their air facility registration to proceed with the modification if the new registration is not received within 30 days of the Department's receipt of the modification application as is allowed by proposed 201-5.4(c)(3) for state facility permits and existing 201-6.6(c)(5) for Title V facility permits. Commenter 2

Response to Comment 9: The provisions of proposed paragraph 201-5.4(c)(3) and existing paragraph 201-6.6(c)(5) specifically apply to minor modifications to air state facility and Title V permits, respectively. The Department does not differentiate between minor and significant modifications for air facility registrations. Accordingly, a similar provision allowing the facility owner or operator to commence a minor modification at a registered facility 30 days after the Department's receipt of the application is not consistent with the modification provisions for registrations.

#### List of Commenters

1. Eastman Kodak Company
2. New York City Department of Environmental Protection

## Department of Financial Services

### EMERGENCY RULE MAKING

#### Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure

**I.D. No.** DFS-06-21-00014-E

**Filing No.** 80

**Filing Date:** 2021-01-26

**Effective Date:** 2021-01-26

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Part 52 (Regulation 62) of Title 11 NYCRR.

**Statutory authority:** Financial Services Law, sections 202, 302; Insurance Law, sections 301, 3216, 3217, 3221 and 4303

**Finding of necessity for emergency rule:** Preservation of public health and general welfare.

**Specific reasons underlying the finding of necessity:** Governor Andrew M. Cuomo declared a state of emergency on March 7, 2020, which has been extended, to help New York more quickly and effectively contain the spread of the novel coronavirus ("COVID-19"). While the COVID-19 pandemic has had an immeasurable impact on all New Yorkers, the impact on essential workers, including health care workers, first responders and other frontline essential workers, has been especially difficult as they have been required to directly interact with the public while working during this public health emergency, exposing themselves and their families to incremental risks, to ensure that essential services continue to be available for all New Yorkers. For health care workers and first responders, in particular, witnessing the devastating effects of COVID-19 firsthand can take an emotional and psychological toll. This amendment prohibits authorized insurers and health maintenance organizations (collectively, "health care plans") that provide comprehensive coverage for hospital, surgical, or medical care from imposing, and provides that no essential worker shall be required to pay, copayments, coinsurance, or annual deductibles (unless required by federal law for a high deductible health plan) for mental health services rendered by in-network providers on an outpatient basis for essential workers. The amendment requires every health care plan to provide written notification of the requirements of the amendment to its in-network mental health providers ("providers") to ensure that the providers do not require an insured to pay a copayment, coinsurance, or annual deductible that is prohibited from being imposed pursuant to the amendment.

Given the continued toll this crisis has had on essential workers, including health care workers, first responders and other frontline essential employees, it is essential that these workers have access to mental health services. The waiver of copayments, coinsurance, and annual deductibles for in-network mental health services rendered by in-network providers on an outpatient basis is necessary to ensure that these workers have no barriers to the care they need.

To ensure that essential workers have access to mental health services, it is imperative that this amendment be promulgated on an emergency basis for the preservation of public health and general welfare.

**Subject:** Minimum Standards for Form, Content, and Sale of Health Insurance, Including Standards of Full and Fair Disclosure.

**Purpose:** To waive copayments, coinsurance, and annual deductibles for essential workers for in-network outpatient mental health services.

**Text of emergency rule:** Section 52.16(r) is added as follows:

(r)(1) No policy or contract delivered or issued for delivery in this State that provides comprehensive coverage for hospital, surgical, or medical care shall impose, and no essential worker shall be required to pay, copayments, coinsurance, or annual deductibles for an in-network outpatient mental health service, unless the policy or contract is a high deductible health plan as defined in Internal Revenue Code section 223(c)(2), in which case the service may be subject to such plan's annual deductible if otherwise required by federal law.

(2) An insurer shall provide written notification, which may include e-mail, to its in-network outpatient mental health providers that they shall not collect any deductible, copayment, or coinsurance from an essential worker in accordance with this subdivision. Such notice shall include the definition of essential worker.

(3) Essential worker means: