

**SECTION 25: AFFIRMATIVE DEFENSE FOR EXCESS EMISSIONS DUE TO
MALFUNCTIONS, STARTUP, AND SHUTDOWN**

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25.1 Applicability

25.1.1 Section 25 establishes affirmative defenses for certain emissions in excess of an emission standard or limitation and applies to all emission standards or limitations except for the following standards or limitations:

- (a) Promulgated pursuant to Sections 111 or 112 of the Act;
- (b) Promulgated pursuant to Titles IV or VI of the Act;
- (c) Contained in any Prevention of Significant Deterioration Authority to Construct Permit or Nonattainment Area New Source Review (NSR) Authority to Construct Permit issued directly by EPA; or
- (d) Included in an Authority to Construct Permit in order to satisfy the requirements of Section 12.2.10.

25.2 Affirmative Defense for Malfunctions

25.2.1 Emissions in excess of an applicable emission limitation due to a malfunction shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to malfunction has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of Section 25.6 and has demonstrated all of the following:

- (a) The excess emissions resulted from a sudden and unavoidable breakdown of process equipment or air pollution control equipment beyond the reasonable control of the operator;
- (b) The air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
- (c) If repairs were required, the repairs were made in an expeditious fashion when the applicable emission limitations were being exceeded. Off-shift labor and overtime were utilized where practicable to ensure that the repairs were made as expeditiously as possible. If off-shift labor and overtime were not utilized, the owner or operator satisfactorily demonstrated that the measures were impracticable;
- (d) The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;

- (e) All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
- (f) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (g) During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Section 11 that could be attributed to the emitting source;
- (h) The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned, and could not have been avoided by better operations and maintenance practices;
- (i) All emissions monitoring systems were kept in operation if at all practicable; and
- (j) The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.

25.3 Affirmative Defense for Startup and Shutdown

25.3.1 Except as provided in Section 25.3.2, and unless otherwise provided for in the applicable requirement, emissions in excess of an applicable emission limitation due to startup and shutdown shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to startup and shutdown has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of Section 25.6 and has demonstrated all of the following:

- (a) The excess emissions could not have been prevented through careful and prudent planning and design;
- (b) If the excess emissions were the result of a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe damage to air pollution control equipment, production equipment, or other property;
- (c) The source's air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;
- (d) The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;

- (e) All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;
- (f) During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Section 11 that could be attributed to the emitting source;
- (g) All emissions monitoring systems were kept in operation if at all practicable; and
- (h) The owner or operator's actions in response to the excess emissions were documented by contemporaneous records.

25.3.2 If excess emissions occur due to a malfunction during routine startup and shutdown, then those instances shall be treated as other malfunctions subject to Section 25.2.

25.4 Affirmative Defense for Malfunctions During Scheduled Maintenance

If excess emissions occur due to a malfunction during scheduled maintenance, then those instances will be treated as other malfunctions subject to Section 25.2.

25.5 Demonstration of Reasonable and Practicable Measures

For an affirmative defense under Section 25, the owner or operator of the source shall demonstrate, through submission of the data and information required by Section 25.6, that all reasonable and practicable measures within the owner or operator's control were implemented to prevent the occurrence of the excess emissions.

25.6 Reporting of Excess Emissions

25.6.1 The owner or operator of any source required to obtain a permit under Section 12 shall report to the Control Officer emissions in excess of an applicable requirement or the emission limits prescribed by the permit. The report shall be in two (2) parts:

- (a) Notification by telephone, facsimile or electronic mail within twenty-four (24) hours of the time the owner or operator first learns of the excess emissions;
- (b) Written notification by submission of an excess emission report containing the information required by Section 25.6.3 within seventy-two (72) hours of the notification required by paragraph (a) above.

25.6.2 The owner or operator of any source required to obtain a permit under Section 12 shall report to the Control Officer emissions that are in excess of an applicable requirement or emission limit that pose a potential imminent and substantial danger to public health, safety or the environment as soon as possible, but in no case later than twelve (12) hours after the deviation is discovered, with a written report submitted within two (2) days of the occurrence.

25.6.3 An excess emission report shall contain the following information:

- (a) The identity of each stack or other emission point where the excess emissions occurred;
- (b) The magnitude of the excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the magnitude of the excess emissions;
- (c) The time and duration or expected duration of the excess emissions;
- (d) The identity of the equipment from which the excess emissions emanated;
- (e) The nature and cause of the emissions;
- (f) The steps taken if the excess emissions were the result of a malfunction, to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunctions;
- (g) The steps that were or are being taken to limit the excess emissions; and
- (h) If the source's permit contains procedures governing source operation during periods of startup or malfunction and the excess emissions resulted from startup or malfunction, a list of the steps taken to comply with the permit procedures.

25.6.4 In the case of continuous or recurring excess emissions, the notification requirements of Sections 25.6.1 and 25.6.2 shall be satisfied if the source provides the required notification after excess emissions are first detected and includes in the notification an estimate of the time the excess emissions will continue. Excess emissions occurring after the estimated time period or changes in the nature of the emissions as originally reported shall require additional notification pursuant to Sections 25.6.1 and 25.6.2.

History: Amended: March 27, 1980; September 3, 1981; April 21, 1983; July 8, 1985; November 18, 1993; December 19, 1996; April 9, 2001; June 3, 2003; July 1, 2004; May 18, 2010.