

**TITLE 252. DEPARTMENT OF ENVIRONMENTAL QUALITY
CHAPTER 100. AIR POLLUTION CONTROL**

SUBCHAPTER 9. EXCESS EMISSION REPORTING REQUIREMENTS

252:100-9-1. Purpose

This Subchapter ~~subchapter~~ sets forth requirements for the reporting of excess emissions and establishes affirmative defense provisions for facility owners and operators for excess emissions during periods of startup, shutdown or malfunction.

252:100-9-2. Definitions

The following words and terms, when used in this Subchapter, shall have the following meaning; ~~unless the context clearly indicates otherwise:~~

"Bypass" means intentionally avoiding the use of air pollution control equipment.

"Excess emissions" means the emission of regulated air pollutants in excess of an applicable limitation or requirement as specified in the applicable ~~limiting Subchapter, rules and regulations,~~ enforceable permit, or order of the DEQ. For the purposes of this subchapter, excess emissions also means any violation of any opacity limit specified in an applicable regulation, enforceable permit, or order of the DEQ. This term does not include fugitive ~~VOC~~ emissions as defined in OAC 252:100-1-3 ~~covered by an existing leak detection and repair program that is required by a federal or state regulation.~~

"Excess emission episode" means a continuous period of excess emissions. An excess emission event may be comprised of multiple excess emission episodes.

"Excess emission event" means the total duration of a startup, shutdown, or malfunction which is the cause of excess emissions.

"Malfunction" means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or the failure of a process to operate in a normal or ~~usual~~ expected manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

"Regulated air pollutant" means any substance or group of substances listed in Appendix P of this Chapter, or any substance regulated as an air pollutant under any federal regulation for which the Department has been given authority, or any other substance for which an air emission limitation or equipment standard is set by an enforceable permit.

"Shutdown" means ~~the cessation of operation of any air pollution control equipment, process or process equipment:~~

~~—"Startup" means the setting into operation of any air pollution control equipment, process or process equipment:~~

~~—"Technological limitation" means operating constraints deliberately and necessarily designed into a piece of pollution control equipment or process equipment to prevent damage to the equipment and/or to prevent hazards to operating or maintenance personnel:~~

"Working day" means 8:00 a.m. to 4:30 p.m. each day except Saturday, Sunday, or a legal holiday for state employees as proclaimed by the Governor.

252:100-9-3. General reporting requirements [REVOKED]

Agency Note: Amended and moved to 252:100-9-3.1 and 100-9-3.3.

252:100-9-3.1. Excess emission reporting requirements [AMENDED AND RENUMBERED TO 252:100-9-9]

(a) ~~Immediate notice.~~ Excess emissions shall be reported to the Division as soon as the owner or operator of the facility has knowledge of such emissions, but no later than 4:30 p.m. the next working day. Notification may be made by fax (1-405-702-4101), telephone (1-877-277-6236), or any other method acceptable to the Division.

(b) ~~Written report.~~

~~— (1) Within ten working days after the immediate notice is given, a written report shall be submitted describing the extent of the excess emissions and response actions taken by the facility. The written report shall include all of the following data:~~

~~— (A) The date and time that the excess emissions occurred.~~

~~— (B) The duration or expected duration of the excess emissions.~~

~~— (C) The processes and equipment involved.~~

~~— (D) The amount by which the total emissions exceed the applicable limitation or requirement, expressed in units of the applicable limitation or requirement, including the data and calculations used to compute the magnitude of emissions.~~

~~— (E) The cause of the excess emissions, if known, including the reason for the maintenance, startup or shutdown, if applicable.~~

~~— (F) The applicable limitation(s) or requirement(s) exceeded.~~

~~— (G) The steps taken to correct the cause, if applicable, and mitigate the amount or concentration of the excess emissions.~~

~~— (H) Any additional information that may be required by the Division.~~

~~— (2) If the owner or operator of a facility concludes that the startup or shutdown of air pollution control or process equipment results in excess emissions solely as a result of technological limitations, the owner or operator shall notify the Division in writing of such conclusion. The notice shall contain the reasons and data upon which the owner or operator bases the conclusion that such excess emissions occur as a result of technological limitations and shall be submitted with the written report required in (1) of this subsection. Thereafter, the owner or operator may file quarterly excess emission reports in place of the report required in (1) of this subsection. Quarterly reports shall include the information required in (1) of this subsection and shall be submitted within 30 days after the end of each calendar quarter.~~

(c) ~~Certification~~

~~— (1) Any written report submitted pursuant to (b)(1) or (b)(2) of this Section or 252:100-9-3.3 shall contain certification of truth, accuracy, and completeness. This certification shall be signed by a responsible official or designee and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in this document are true, accurate, and complete."~~

~~—(2) The report required under (b)(1) of this Section may be submitted without a certification if an appropriate certification is provided within ten working days thereafter, together with any corrected or supplemental information concerning the excess emissions.~~

252:100-9-3.2. [RESERVED]

252:100-9-3.3. Demonstration of cause [AMENDED AND RENUMBERED TO 252:100-9-9]

~~(a) **Malfunctions.** Excess emissions caused by malfunction are exempt from compliance with air emission limitations established in permits, rules, and orders of the DEQ if the owner or operator complies with the requirements of 252:100-9-3.1 and (c) of this Section and demonstrates that:~~

~~—(1) The excess emissions were caused by a sudden and not reasonably preventable failure of air pollution control equipment, process equipment or a process to operate in a normal or usual manner;~~

~~—(2) The excess emissions did not stem from an activity or event that could have been reasonably foreseen and avoided or planned for, and could not have been avoided by better operation and maintenance practices;~~

~~—(3) To the maximum extent practicable, the air pollution control equipment or process equipment was maintained and operated in a manner consistent with good practice for minimizing emissions; provided, however, that this provision shall not be construed to automatically require the shutdown of process equipment to minimize emissions;~~

~~—(4) Repairs were made in an expeditious fashion when the operator knew or should have known that an applicable emission limitation was being exceeded. Off-shift labor and overtime were utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;~~

~~—(5) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of malfunction; however, this provision shall not be construed to require the use or installation of additional or redundant pollution control equipment not otherwise required;~~

~~—(6) Reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;~~

~~—(7) Emission monitoring systems capable of producing valid data were kept in operation if at all possible;~~

~~—(8) The owner or operator's actions in response to the malfunction were documented by properly signed, contemporaneous operation logs, or other relevant evidence;~~

~~—(9) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance of the facility.~~

~~(b) **Maintenance, start-up or shutdown.** Excess emissions that result from maintenance, start-up or shutdown are exempt from compliance with air emission limitations established in permits, rules, and orders of the DEQ if the owner or operator complies with the requirements of 252:100-9-3.1 and (c) of this Section and demonstrates that:~~

~~—(1) The periods of excess emissions were short and infrequent and could not have been prevented through careful planning and design.~~

- ~~—(2) The excess emissions were not part of a recurring pattern indicative of inadequate operation or maintenance.~~
 - ~~—(3) If the excess emissions were caused by a bypass, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.~~
 - ~~—(4) The facility was operated in a manner consistent with good practice for minimizing emissions; provided, however, that this provision shall not be construed to require the use or installation of additional or redundant pollution control equipment not otherwise required and that this provision shall not be construed to automatically require the shutdown of process equipment to minimize emissions.~~
 - ~~—(5) Reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality.~~
 - ~~—(6) Emissions monitoring systems capable of producing valid data were kept in operation if at all possible.~~
 - ~~—(7) The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.~~
- ~~(e) **Demonstration deadlines.** A demonstration must be made within 30 days after the occurrence has ended. Owners and operators who report quarterly under 252:100-9-3.1(b)(2)(relating to technological limitations) may submit their demonstrations with their quarterly reports.~~
- ~~(d) **Burden of proof.** The owner or operator has the burden of proving that the criteria identified in subsection (a) for malfunctions or in subsection (b) for maintenance, start-up or shutdown occurrences are satisfied.~~
- ~~(e) **Exceptions.**~~
- ~~—(1) The Division will not exempt sources from complying with any NSPS or NESHAP requirements.~~
 - ~~—(2) Excess emissions occurring more than 1.5 percent of the time that a process operated in a calendar quarter may be indicative of inadequate design, operation, or maintenance, and the Division may initiate further investigation.~~
 - ~~—(3) Excess emissions resulting from malfunctions, maintenance, start-ups or shutdowns will be subject to the DEQ's power to require corrective action or order any other action necessary under the circumstances, if the emissions cause or contribute to a condition of air pollution.~~

252:100-9-4. Maintenance procedures [REVOKED]

Agency Note: Amended and moved to 100-9-3.3.

252:100-9-5. Malfunctions and releases [REVOKED]

Agency Note: Amended and moved to 100-9-3.3.

252:100-9-6. Excesses resulting from engineering limitations [REVOKED]

Agency Note: Amended and moved to 100-9-3.3.

252:100-9-7. Applicability

This subchapter applies to the owners or operators of air contaminant sources in the State of Oklahoma that are subject to any emission limitation contained in any applicable regulation or rule, enforceable permit or order of the DEQ. All periods of excess emissions regardless of cause are violations of the Act and rules promulgated thereunder, the Oklahoma Clean Air Act and rules promulgated thereunder, and any applicable permit or other authorization of the Department. Startup and shutdown of process equipment are a normal part of the operation of an air contaminant source. The owner or operator shall account for these operations in the planning, design and implementation of operating procedures for the process and control equipment.

252:100-9-8. [RESERVED]

252:100-9-9. Excess emission reporting requirements

(a) **Immediate notice.** The owner or operator of the air contaminant source experiencing excess emissions shall notify the Director as soon as possible of the first occurrence of excess emissions in each excess emission event but no later than 4:30 p.m. the following working day. Notification may be made by telephone (1-877-277-6236), by email (excessemissions@deq.state.ok.us), by web (<http://www.deq.state.ok.us/excessemissions/>) or by other method as approved in writing by the Director prior to the excess emission event. The notification must include the following information: company, facility, event date, event start time, cause if known, and pollutants.

(b) **Written excess emission event report.** No later than thirty (30) calendar days after submission of an immediate notice, the owner or operator of an air contaminant source from which excess emissions have occurred shall submit a report for each excess emission event describing the extent of the event and the actions taken by the owner or operator of the facility in response to said event. If a facility experiences an ongoing excess emission event exceeding thirty (30) calendar days, the owner or operator may file an initial excess emission event report within thirty (30) calendar days of the event followed by a final written excess emission event report within thirty (30) calendar days after the end of the ongoing event. In addition to addressing any affirmative defense in OAC 252:100-9-11, the report shall include:

(1) The date and time of each excess emission event.

(2) The duration of the excess emission(s) for each excess emission event and excess emission episode.

(3) The name and the permit identification of the units or areas from which the excess emissions occurred.

(4) The magnitude by which the applicable limitation or requirement was exceeded expressed in the units of the applicable limitation or requirement and the total mass of any quantifiable air contaminants released in excess of the applicable limitation or requirement. Good engineering practice and methods must be used to provide reasonably accurate representations for excess emissions and opacity.

(5) The cause of the excess emissions including the cause of the event.

(6) The applicable authorized emission and/or opacity limits related units involved in the episodes and events, including the applicable permit number and conditions and rule citations.

(c) **End of year excess emission report.** The owner or operator of an air contaminant source that is required to submit an annual emissions inventory under OAC 252:100-5 must include as part of the emissions inventory the annual aggregate mass released (tons/year) if such can be quantified for each regulated air pollutant from all excess emission episodes for each emission unit in the inventory.

(d) **Certificate of truth, accuracy, and completeness required.** Any report filed pursuant to this subchapter shall contain a certification of truth, accuracy, and completeness. This certification shall be signed by a responsible official or his designee and shall contain the following language: "I certify, based on information and belief formed after reasonable inquiry, the statements and information in this document are true, accurate and complete."

252:100-9-10. [RESERVED]

252:100-9-11. Affirmative defense

(a) Affirmative defense for excess emissions during malfunctions.

An affirmative defense to a claim of violation under this subchapter is provided to owners and operators for civil penalty actions for excess emissions during periods of malfunction. To establish the affirmative defense and to be relieved of a civil penalty in any action to enforce an applicable requirement, the owner or operator of the facility must provide properly signed, contemporaneous operating logs or other relevant evidence, meet the notification requirements of OAC 252:100-9-9 in a timely manner, and prove by a preponderance of evidence that:

- (1) The excess emissions were caused by a sudden, unavoidable breakdown of equipment, or a sudden, unavoidable failure of a process to operate in the normal or expected manner.
- (2) The excess emissions did not stem from any activity or event that could reasonably have been foreseen and planned for and could not have been avoided by better operation and maintenance practices.
- (3) Repairs were made as expeditiously as possible.
- (4) The amount and duration of the excess emissions, including any bypass, were minimized to the maximum extent practicable during periods of such emissions.
- (5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality.
- (6) Any monitoring systems that were not kept in operation during the period of excess emissions were taken off line to prevent damage or for other acceptable reasons.
- (7) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance.
- (8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions.
- (9) During the period of excess emissions, there were no exceedances of the relevant ambient air quality standards that could be attributed to the emitting source.

(b) Affirmative defense for excess emissions during startup and shutdown. An affirmative defense is provided to owners and operators for civil penalty actions for excess emissions during periods of startup and shutdown. To establish the affirmative defense and to be relieved of a civil penalty in any action to enforce an applicable requirement, the owner or operator of the facility must

provide properly signed, contemporaneous operating logs or other relevant evidence, an explanation of why the excess emissions were not accounted for in the facility's operating permit, meet the notification requirements of OAC 252:100-9 in a timely manner, and prove by a preponderance of the evidence that:

(1) The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through careful planning and design.

(2) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation or maintenance.

(3) If the excess emissions were caused by a bypass, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(4) All possible steps were taken to minimize the impact of excess emissions on ambient air quality.

(5) Any monitoring systems that were not kept in operation during the period of excess emissions were taken off line to prevent damage or for other acceptable reasons.

(6) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions.

(7) During the period of excess emissions, there were no exceedances of the relevant ambient air quality standards that could be attributed to the emitting source.

(c) Affirmative defense prohibited. The affirmative defense provisions of this section shall not be available for:

(1) Claims for injunctive relief.

(2) Failure to meet federally promulgated emission limits, including, but not limited to, 40 CFR Parts 60, 61 and 63.

(3) SIP limits or permit limits that have been set taking into account potential emissions during malfunctions, including, but not necessarily limited to limits that indicate they apply during malfunctions, and limits that indicate they apply at all times or without exception.

(4) Violations of requirements that derive from 40 CFR Parts 60, 61 or 63, or any other federally enforceable performance standard or emission limit.

(5) Excess emissions that have the potential to cause an exceedance of the NAAQS or PSD increments.

(d) Affirmative defense determination. In making any determination whether a source established an affirmative defense, the Division shall consider the information within the notification required in OAC 252:100-9-9 and any other information the Director deems necessary and relevant which may include, but not be limited to, physical inspection of the facility and review of documentation pertaining to the maintenance and operation of process and air pollution control equipment. This section should not be construed as limiting EPA or citizen's authority under the Act.