

SUBCHAPTER 9. EXCESS EMISSION REPORTING REQUIREMENTS

252:100-9-1. Purpose

This subchapter sets forth requirements for the reporting of excess emissions and establishes affirmative defense provisions for facility owners and operators for excess emissions.

252:100-9-1.1. Applicability

This subchapter applies to the owners and operators of air contaminant sources that are subject to emission limitations in OAC 252:100, an enforceable permit, an administrative order, or a judicial order.

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 or opacity in excess of an applicable limitation or requirement as specified in the applicable ~~limiting Subchapter rule(s), enforceable permit, or administrative order, of the DEQ, of the DEQ, or judicial order.~~ This term does not include fugitive VOC emissions 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 occurring from one emission unit.

"Excess emission event" means the period of time during which excess emissions occurred, either continuously or intermittently, as a result of the same primary cause. An excess emission event may include one or more excess emission episodes.

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

"Primary cause" means the fundamental aspect of the cause that can logically be identified. In the event of a series of causes, one leading to another, the fundamental cause is the primary cause.

"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.

252:100-9-3.1. Excess emission reporting requirements [AMENDED AND RENUMBERED TO 252:100-9-7.]

~~(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.~~

252:100-9-3.3. Demonstration of cause [AMENDED AND RENUMBERED TO 252:100-9-8.]

~~(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.~~

252:100-9-7. Excess emission reporting requirements

(a) Immediate notice.

(1) The owner or operator of an air contaminant source of excess emissions shall notify the Director of the first occurrence of excess emissions in each excess emission event as soon as possible 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:

_____ (A) company name,

_____ (B) facility name,

_____ (C) event date,

_____ (D) event start time,

_____ (E) emission unit,

_____ (F) primary cause, if known and

_____ (G) opacity and/or pollutant(s) emitted.

(2) An immediate notice shall not be required for excess emission events with a primary cause of startup or shutdown.

(3) If an immediate notice is submitted and the owner or operator discovers that no excess emission has occurred, the owner or operator shall retract the immediate notice in writing within thirty (30) days of submission of the immediate notice.

(b) Excess emission event report. No later than thirty (30) calendar days after the start of an excess emission event, 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 this event. After receiving a written request prior to the thirty (30) day deadline, the Director may grant an extension. The report shall include:

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

_____ (2) The start time and duration of each excess emission episode in the excess emission event.

(3) The common name and the permit established identifier(s) from which the excess emissions occurred.

(4) The applicable authorized emissions limits, related to the air contaminant sources involved in the event, including:

(A) any applicable permit number(s) and condition(s); and/or

(B) any applicable rule, administrative order provision, or judicial order provision.

(5) The amount by which the total emissions exceeded 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 said event. Include 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.

(6) The primary cause of the event, including the reason for any relevant startup or shutdown.

(7) The immediate action taken to address the excess emission event and the corrective action(s) taken to address the primary cause of the excess emission event. If no corrective actions are taken, the report shall include a detailed explanation for that conclusion.

(8) The corrective action(s) taken to address a reoccurrence of the excess emission event.

(9) Any additional information that may be required by the Division.

(c) Ongoing events. If an excess emission event is ongoing at the time the excess emission event report required by OAC 252:100-9-7(b) is submitted, the owner or operator shall submit a final excess emission event report within thirty (30) calendar days after the end of the ongoing event. If an excess emission event is ongoing for one or more calendar quarters, the owner or operator shall file updated excess emission event reports within thirty (30) calendar days after the end of each calendar quarter until the event has ended. The updated reports shall be clearly identified as updated reports.

(d) Alternative reporting. Owners or operators of air contaminant sources subject to the excess emission reporting requirements of OAC 252:100-9-7(b) and the reporting requirements of 40 C.F.R. Parts 60, 61, and 63, may submit a written request to the Director for a case-by-case determination allowing alternative reporting. The written request shall include an alternative reporting plan and explain the extent to which the federal reporting requirements duplicate the requirements of this subchapter. A written determination on an alternative reporting request shall be made within ninety (90) days after such request is received by the Director. If no determination is made within the ninety (90) day period, the owner or operator making such request may operate under the proposed alternative reporting plan until the Director issues a determination.

(e) 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 include an original signature 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."

252:100-9-8. Affirmative defenses

(a) General. 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 applicable permit or other authorization of the DEQ. An affirmative defense is provided to owners and operators for civil or administrative penalty actions for excess emissions during periods of startup, shutdown and malfunction.

(b) Affirmative defenses for excess emissions during malfunctions. To establish the affirmative defense and to be relieved of a civil or administrative penalty in any action to enforce an applicable requirement, the owner or operator of the facility must meet the notification requirements of OAC 252:100-9-7 and establish by a preponderance of the evidence:

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

(2) The excess emissions did not stem from any activity or event that could have been planned for or reasonably foreseen and avoided.

(3) Repairs were made as expeditiously as possible.

(4) The amount and duration of the excess emissions, including any bypass, were minimized to the extent practicable during periods of such emissions.

(5) Reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality.

(6) The reasons why any monitoring systems were not kept in operation, if applicable.

(7) The owner or operator's actions during the period of excess emissions were documented by contemporaneous operating logs or other relevant evidence.

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

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

(c) Affirmative defenses for excess emissions during startup and shutdown. To establish the affirmative defense and to be relieved of a civil or administrative penalty in any action to enforce an applicable requirement, the owner or operator of the facility must meet the notification requirements of OAC 252:100-9-7 and establish by a preponderance of the evidence:

(1) The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through reasonable 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, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

(4) The frequency and duration of operation in startup and shutdown periods were minimized to the extent practicable.

(5) Reasonable steps were taken to minimize the impact of excess emissions on ambient air quality.

(6) The reasons why any monitoring systems were not kept in operation, if applicable.

(7) The owner or operator's actions during the period of excess emissions were documented by contemporaneous operating logs or other relevant evidence.

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

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

(1) Claims for injunctive relief.

(2) SIP limits or permit limits that have been set taking into account potential emissions during startup and shutdown, including, but not necessarily limited to, limits that indicate they apply

during startup and shutdown, and limits that explicitly indicate they apply at all times or without exception.

(3) Excess emissions that cause an exceedance of the NAAQS or PSD increments.

(4) Failure to meet federally promulgated emission limits, including, but not limited to, 40 C.F.R. Parts 60, 61 and 63.

(5) Violations of requirements that derive from 40 C.F.R. Parts 60, 61 and 63, or any other federally enforceable performance standard or emission limit.

(e) Affirmative defense determination. In making any determination whether a source established an affirmative defense, the Director shall consider the information within the notification required in OAC 252:100-9-7 and any other information the Director deems necessary and relevant, which may include, but is not limited to, physical inspection of the facility and review of documentation pertaining to the maintenance and operation of emission units and air pollution control equipment. This section should not be construed as limiting EPA or citizens' authority under the Act.