

Chapter 100

Subchapter 8. Permits for Part 70 Sources and Major New Source Review (NSR) Sources

❖ Section 100-8-6. Permit Content

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Air Quality Advisory Council Meeting – October 17, 2024



OKLAHOMA
Environmental
Quality

Removal of Part 70 “Affirmative Defense” Provisions

➤ EPA Federal Register Notice

➤ *"Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program"*

➤ [88 Fed. Reg. 47029](#) (July 21, 2023)

Removal of Part 70 “Affirmative Defense” Provisions

➤ EPA Federal Register Notice

➤ Removed 40 CFR §70.6 **Permit content**, Subsection (g) **Emergency provision**

➤ Removed same Subsection from Part 71

➤ States Required to Remove “Affirmative Defense” Provisions from Operating Permit Program

➤ Remove Provisions from State Rules

➤ Remove Provisions from Permits “in the ordinary course of business”

➤ Submit Part 70 Operating Permit Program Update (or Extension Request) within One Year

Removal of Part 70 “Affirmative Defense” Provisions

➤ DEQ Requested Deadline Extension

➤ EPA Extended Deadline from August 21, 2024 to October 31, 2025

➤ Accommodate Oklahoma’s Rulemaking Process

- Oklahoma Legislature Review of Adopted Rule

- February Submittal Deadline for Next Legislative Session

- Rules would be Effective September 2025

➤ Otherwise, Promulgation Delayed by a Full Year

- EPA Extension Letter Included Alternative Date if Unable to Pass this Year

- Uncertainty Not Best for Stakeholders or Public

Removal of “Affirmative Defense” Provisions

➤ Other “Affirmative Defense” Provisions Removed

➤ Subchapter 9 Excess Emissions Reporting Requirements

➤ EPA’s National SIP Call

➤ Subchapter 9 Revised Effective 2016

➤ Removed Affirmative Defense Provisions

➤ Allow for Consideration of Mitigating Factors for Periods of Excess Emissions

➤ Facility Requests Relief in DEQ Administrative Penalty Action

➤ State-Only Provisions

➤ Withdrew Outdated SC 9 Language from SIP

➤ Satisfied EPA’s SIP Call

State Implementation Plan vs. State Part 70 Operating Permits Program

- State Implementation Plan – CAA Title I
 - “Infrastructure” of Air Pollution Control Program
 - Maintain (or Attain) NAAQS
 - Regional Haze Program
 - Construction Permits - New Source Review
 - PSD & Minor NSR
 - New Construction & Modifications
 - Frequent Updates, Well-established Process

State Implementation Plan vs. State Part 70 Operating Permits Program

- Part 70 Operating Permits Program – CAA Title V (1990 CAA Amendments)
 - Gather Ongoing Requirements in Single Facility-wide Permit
 - Major Facilities
 - Requirements Established Under NSR, NSPS, NESHAPs, etc.
 - Some Additional Monitoring, Recordkeeping, and Reporting Requirements
 - State Programs: 40 CFR Part 70
 - Federal Programs: 40 CFR Part 71
 - Formal Program Review & Approval Infrequent, Less Well-established Process

Removal of Subsection (g) of 40 CFR § 70.6

(g) *Emergency provision* —

(1) **Definition.** An “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(2) **Effect of an emergency.** An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of [paragraph \(g\)\(3\)](#) of this section are met.

(3) The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (i) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (ii) The permitted facility was at the time being properly operated;
- (iii) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
- (iv) The permittee submitted notice of the emergency to the permitting authority within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of [paragraph \(a\)\(3\)\(iii\)\(B\)](#) of this section. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(4) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

(5) This provision is in addition to any emergency or upset provision contained in any applicable requirement.

Removal of Part 70 “Affirmative Defense” Provisions

➤ Definition of “Emergency – EPA vs. DEQ

252:100-8-2. Definitions

"Emergency" means, when used in OAC 252:100-8-6(a)(3)(C)(iii)(I) and (e), any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

40 CFR § 70.6 Permit content.

(g) *Emergency provision* —

(1) **Definition.** An “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

Removal of Part 70 “Affirmative Defense” Provisions

➤OAC 252:100-8-6. Permit Content

252:100-8-6. Permit content

(a) **Standard permit requirements.** Part 70 permits issued under this Chapter shall include all applicable requirements and state-only requirements (as defined in OAC 252:100-8-2) that apply to the permitted source at the time of issuance. Each permit shall include the elements in paragraphs (1) through (4) of subsection (a) of this Section.

(3) **Monitoring and related recordkeeping and reporting requirements.**

(C) **Reporting requirements.** The permit shall incorporate all applicable reporting requirements and contain the following requirements.

(ii) Each report submitted under ~~(C)(I)-(C)(i)~~ of this paragraph shall identify any exceedances from permit ~~requirements-limits~~ since the previous report that have been monitored by the monitoring systems required under the permit, and any ~~exceedances~~ deviation from the testing, monitoring, operating, recordkeeping and reporting requirements under the permit.

(iii) In addition to semiannual monitoring reports, each permittee shall be required to submit the following supplemental reports.

(I) Any exceedance resulting from an emergency as defined in OAC 252:100-8-2

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➤OAC 252:100-8-6(a)(3)(C)(ii), Under Reporting Requirements

(ii) Each report submitted under ~~(C)(i)~~ of this paragraph shall identify any exceedances from permit ~~requirements~~ limits since the previous report that have been monitored by the monitoring systems required under the permit, and any ~~exceedances~~ deviation from the testing, monitoring, operating, recordkeeping and reporting requirements under the permit.

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➤OAC 252:100-8-6(a)(3)(C)(iii)(I), Under Reporting Requirements

~~Requirements under the permit.~~

(iii) In addition to semiannual monitoring reports, each permittee shall be required to submit the following supplemental reports.

(I) Any exceedance resulting from an emergency as defined in OAC 252:100-8-2 or upset conditions as defined in the permit shall be reported promptly but no later than 4:30 p.m. on the next working day after the permittee first becomes aware of the exceedance. The initial report must contain a description of the emergency or upset conditions, any steps taken to mitigate emissions, and corrective actions taken. Quantification of exceedances attributable to emergencies or upset conditions shall be made by the best available method.

(a) In accordance with OAC 252:100-9-7, the permittee shall submit a follow-up written excess emission report. This is a state-only requirement.

~~(b) If the permittee wishes to assert the affirmative defense authorized under subsection (e) of this Section for emergencies, the permittee shall submit a followup written report within 10 working days of first becoming aware of the exceedance. requests consideration of mitigating factors for excess emissions, the report must include all information necessary to establish the emergency under OAC 252:100-9-8. This is a state-only provision.~~

(II) Any exceedance that poses an imminent and substantial danger to public health, safety, or the environment shall be reported as soon as is practicable; but under no circumstance shall notification be more than 24 hours after exceedance.

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►OAC 252:100-8-6(a)(3)(C)(iv), Under Reporting Requirements

(iv) Every report submitted under this subsection shall be certified by a responsible official or designee, ~~except that if a report of an exceedance required under (C)(iii) of this paragraph must be submitted within ten days of the exceedance, the report may be submitted in the first instance without a certification if an appropriate certification is provided within ten days thereafter, together with any corrected or supplemental information required concerning the exceedance. Reports submitted shall be consistent with the requirements of OAC 252:100-9.~~

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➤OAC 252:100-8-6(b) Federally enforceable requirements

➤FYI

(b) Federally enforceable requirements.

(1) Except as provided in paragraph (b)(2) of this Section, all terms and conditions in a permit issued under this Section, including any provisions designed to limit a source's potential to emit, are enforceable by the DEQ, by EPA, and by citizens under section 304 of the Act.

(2) Notwithstanding paragraph (b)(1) of this Section, the DEQ shall designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or any of its applicable requirements, and such terms and conditions shall not be enforceable by EPA and citizens under section 304 of the Act.

Removal of Part 70 “Affirmative Defense” Provisions

➤OAC 252:100-8-6(e) Emergencies

(e) **Emergencies.**

- (1) An emergency ~~constitutes an affirmative defense to~~ may qualify for consideration of mitigating factors for excess emissions, as authorized in OAC 252:100-9-8, in an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (e)(3) of this Section and the reporting requirements of OAC 252:100-8-6(a)(3)(C)(iii)(I) are met.
- (2) ~~The affirmative defense of emergency~~ Qualification for consideration of mitigating factors shall be demonstrated through properly signed, contemporaneous operating logs or other relevant evidence that:
 - (A) an emergency occurred and that the permittee can identify the cause(s) of the emergency;
 - (B) the permitted facility was at the time being properly operated;
 - (C) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit.
- (3) In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
- (4) The provision in this subsection is in addition to any emergency or upset provision contained in any applicable requirement or OAC 252:100-9.

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➤OAC 252:100-8-6(e) Emergencies

(e) **Emergencies.**

(1) An emergency ~~constitutes an affirmative defense to~~ may qualify for consideration of mitigating factors for excess emissions, as authorized in OAC 252:100-9-8, in an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (e)(3) of this Section and the reporting requirements of OAC 252:100-8-6(a)(3)(C)(iii)(I) are met.

(2) ~~The affirmative defense of emergency~~ Qualification for consideration of mitigating factors shall be demonstrated through properly signed, contemporaneous operating logs or other relevant evidence that:

- (A) an emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (B) the permitted facility was at the time being properly operated;
- (C) during the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards or other requirements in the permit.

Next Steps (Requested)

- Recommend Today's Proposed Changes to EQB
 - For Adoption as Permanent Rules
- Prepare Part 70 Operating Permit Program Update for Submittal
- Implement Change
 - Update Language in Major Source Air Quality Permit Standard Conditions
 - Incorporate Updated Standard Conditions into Part 70 Operating Permits as they are renewed or modified

➤ Staff requests:

➤ Motion to recommend the proposed changes to Section 100-8-6 (as reflected in today's folder version) to the Environmental Quality Board for adoption as permanent rules at its next regular meeting (November 21, 2024)

Questions?

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AQD Rules & Planning Section



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