

Rule 266—~~Reporting Procedures for Excess Emissions~~ **Upset and Breakdown Conditions**
(Adopted February 15, 1996; Recodified August 22, 2002 Proposed for amendment August 28, 2008)

~~1—REPORTING PROCEDURES FOR EXCESS EMISSIONS:~~ Emissions exceeding any of the limits established in these Rules or the level of emissions for which a permit or variance was granted, shall be immediately reported to the Air Pollution Control Officer (APCO) in accordance with the following procedures:

~~1.1—~~ The emission source operator shall notify the APCO within two (2) hours of the discovery of any emission exceedance or breakdown condition and shall provide information on the time, duration, cause, and extent of any excess emission. Upon the request of the APCO, a full, written report of each occurrence, including a statement of all known causes and the nature of the actions to be taken pursuant to the requirements of this Rule, shall be submitted to the DISTRICT.

~~1.2—~~ Corrective action shall be taken immediately by the operator of the emission source to correct the conditions causing excess emissions and to reduce the frequency of the occurrence of such conditions. In no event shall equipment be operated in a manner that creates excessive emissions beyond the end of the work shift or twenty four hours, whichever occurs first.

~~1.3—~~ An emergency shall only constitute an affirmative defense to any action brought for non-compliance with technology based emission limits if:

~~1.3.1—~~ The emission source operator can identify the cause(s) of the emergency,

~~1.3.2—~~ The permitted facility was at the time being properly operated,

~~1.3.3—~~ During the period of the emergency, the emission source operator took all reasonable steps to minimize levels of excess emission, and

~~1.4.3—~~ The emission source operator submitted notice of the emergency to the APCO in accordance with the requirements of this Rule.

For the purposes of this Rule, emergency shall be as defined in Title 40 of the Code of Federal Regulations, Part 70, Section 70.6(g); i.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."

~~1.4—~~ An excess emission occurrence may not avoid enforcement action by the APCO or the United States Environmental Protection Agency (EPA) if the occurrence is caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

~~1.5—~~ Nothing expressed in this Rule shall be construed to limit enforcement authorities under the Federal Clean Air Act.

~~1.6~~ — Notwithstanding any provision of this Rule, application of this Rule to any source shall not be construed in part or in whole as exempting the source from full compliance with all other State, federal, and DISTRICT Rules and Regulations.

- 1 PURPOSE**
- 2 APPLICABILITY**
- 3 DEFINITIONS**
- 4 UPSET AND BREAKDOWN NOTIFICATION PROCEDURES**
- 5 DISPOSITION OF SHORT-TERM UPSET OR BREAKDOWN CONDITIONS**
- 6 EMERGENCY VARIANCE PROCEDURES FOR UPSET OR BREAKDOWN CONDITIONS**
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- 1 PURPOSE:** This Rule sets forth procedures for regulated sources and the District to resolve an upset or breakdown condition, including reporting, corrective action, petitioning for an emergency variance, and enforcement.
- 2 APPLICABILITY:** This Rule applies to the owner or operator of any source within the District that may be subject to Rules and Regulations, permit conditions, or orders from the Hearing Board.
- 3 DEFINITIONS:** For purposes of this rule, the following definitions apply:
 - 3.1 Air Pollution Control Officer (APCO):** The person appointed pursuant to the California Health and Safety Code (HSC) section 40750.
 - 3.2 Compliance Threshold Period:** The earlier of either the end of the production run or 24 consecutive hours. For continuous monitoring equipment, the period shall be 96 hours.
 - 3.3 District:** The Butte County Air Quality Management District
 - 3.4 Emergency-**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.
 - 3.5 Improper Maintenance:** Not performing normal, regular maintenance.
 - 3.6 Negligence:** Failure to use the care that a prudent person usually exercises.
 - 3.7 Production Run:** Any discrete process or operation including, but not limited to, a normally scheduled work shift, any batch process, or bulk delivery.
 - 3.8 Upset or Breakdown Condition:** An unforeseeable failure or malfunction of either 1) any air pollution control equipment or related operating equipment which causes a violation of any emission limitation or restriction prescribed by these Rules and Regulations, or by State Law, or 2) any in-stack continuous monitoring equipment; which:
 - 3.8.1** Is not the result of neglect or disregard of any air pollution control law or rule or regulation;
 - 3.8.2** Is not intentional or the result of negligence;
 - 3.8.3** Is not the result of improper maintenance;
 - 3.8.4** Does not constitute a nuisance; and
 - 3.8.5** Is not a recurrent breakdown of the same equipment.
- 4 UPSET OR BREAKDOWN NOTIFICATION PROCEDURES**

- 4.1** The owner or operator shall notify the APCO of any occurrence which constitutes an upset or breakdown condition as soon as reasonably possible, but no later than two (2) hours after its detection.
- 4.2** The notification shall identify:
- 4.2.1** The time of the start of the occurrence,
 - 4.2.2** Estimated duration of the occurrence (if known),
 - 4.2.3** Specific location,
 - 4.2.4** Equipment involved, and
 - 4.2.5** To the extent known, the cause(s) of the occurrence.
- 4.3** The notification shall include the time submitted and shall be made by one of the following methods:
- 4.3.1** Direct phone contact during normal working hours; or
 - 4.3.2** Phone contact to the District's message recording phone during non-working hours; or
 - 4.3.3** Facsimile transmittal; or
 - 4.3.4** Via electronic mail to air@bcaqmd.org.

5 DISPOSITION OF SHORT-TERM UPSET OR BREAKDOWN CONDITIONS

- 5.1** Upon receipt of notification pursuant to Section 4, the APCO shall promptly investigate and make a preliminary determination as to whether the occurrence constitutes an upset or breakdown condition.
- 5.2** For an occurrence which constitutes an upset or breakdown condition, and which persists only through the compliance threshold period, the APCO may elect to take no enforcement action if the owner or operator demonstrates to the APCO's satisfaction that an upset or breakdown condition exists and all of the following requirements are met:
- 5.2.1** The owner operator submits the notification required Section 4; and
 - 5.2.2** The owner or operator takes whatever steps are practicable to minimize the emissions impact of the upset or breakdown condition as soon as possible after the occurrence; and
 - 5.2.3** The owner or operator immediately undertakes appropriate corrective measures and comes into compliance or if this is not practicable without loss of materials or damage to equipment elects to shutdown within the compliance threshold period; and
 - 5.2.4** The APCO determines the breakdown does not interfere with the attainment or maintenance of any national or California ambient air quality standard.
- 5.3** An occurrence which constitute an upset or breakdown condition shall not persist longer than the compliance threshold period, unless the owner or operator has been granted an emergency variance.

6 EMERGENCY VARIANCE PROCEDURES FOR UPSET OR BREAKDOWN CONDITIONS

- 6.1** If the upset or breakdown condition will persist longer than the compliance threshold period, the owner or operator may, in lieu of shutdown, petition for an emergency variance. A petition for emergency variance shall be filed with the Clerk of the Hearing Board and any subsequent hearing and action shall occur pursuant to the requirements of District Rule 600—*Hearing Board Rules and Procedures*.

7 REPORTING REQUIREMENTS

- 7.1** The owner or operator shall submit a written report to the APCO within fifteen (15) calendar days after the upset or breakdown has been corrected if:
- 7.1.1** The occurrence results in excess emissions; or
 - 7.1.2** Requested by the APCO; or
 - 7.1.3** Required by permit conditions.
- 7.2** The written report to the APCO shall include:
- 7.2.1** A statement that the occurrence has been corrected, together with the date of correction, and proof of compliance which is acceptable to the APCO;
 - 7.2.2** A specific statement of the reason(s) or cause(s) for the occurrence sufficient to enable the APCO to determine whether the occurrence was an upset or breakdown condition;
 - 7.2.3** A description of the corrective measures undertaken and/or to be undertaken to avoid such an occurrence in the future;
 - 7.2.4** An estimate of the excess emissions cause by the occurrence; and
 - 7.2.5** Permit numbers and serial numbers of the equipment or controls which failed and pictures of the equipment or controls, if available, and not currently on file with the District.
- 7.3** At the request of the owner or operator, the APCO may extend the deadline up to thirty (30) days for submitting the report required by this section for good cause.

8 ENFORCEMENT

- 8.1** It shall be the responsibility of the owner or operator of the source to provide sufficient information to demonstrate that an upset or breakdown did occur. If the owner or operator fails to provide sufficient information, the APCO shall investigate and take any appropriate enforcement action.
- 8.2** Any failure to comply or to comply in a timely manner with the reporting requirements established in Sections 4 and 7.1 of this rule shall constitute a separate violation of this rule.

- 8.3** It shall constitute a separate violation of this rule for any person to file with the APCO a report which falsely, or without probable cause, claims that an occurrence is an upset or breakdown.
- 8.4** If at any time the APCO determines that the occurrence does not constitute an upset of breakdown condition as defined by this rule, the APCO may take appropriate enforcement action, including but not limited to seeking fines, an abatement order, or an injunction against further operation.
- 8.5** This Rule shall not be construed to limit the enforcement authorities of the United States Environmental Protection Agency (EPA) or public under the Federal Clean Air Act.