

CHAPTER 6: UPSET AND EMERGENCY CONDITIONS

Rule 19.601 Upset Conditions

For purposes of Chapter 6 of Rule 19, “upset condition” shall be defined as exceedances of applicable emission limitations lasting thirty (30) or more minutes, in the aggregate, during a twenty-four-hour period, unless otherwise specified in an applicable permit or rule (such as new source performance standards). All upset conditions, resulting in violation of an applicable permit or rule, shall be reported to the Division. Any source exceeding an emission limit established by Rule 19 or applicable permit shall be deemed in violation of Rule 19 or permit and shall be subject to enforcement action. The Division may forego enforcement action for federally regulated air pollutant emissions given that the person responsible for the source of the excess emissions does the following:

- (A) Demonstrates to the satisfaction of the Division that the emissions resulted from:
 - (1) equipment malfunction or upset and are not the result of negligence or improper maintenance; or
 - (2) physical constraints on the ability of a source to comply with the emission standard, limitation or rate during startup or shutdown;

And that all reasonable measures have been taken to immediately minimize or eliminate the excess emissions.

- (B) Reports such occurrence or upset or breakdown of equipment to the Division by the end of the next business day after the discovery of the occurrence.
- (C) Submits to the Division, at its request, a full report of such occurrence, including the identification of and location of the process and control equipment involved in the upset and including a statement of all known causes and the scheduling and nature of the actions to be taken to eliminate future occurrences or to minimize the amount by which said limits are exceeded and to reduce the length of time for which said limits are exceeded.

Rule 19.602 Emergency Conditions

An “emergency” means any situation arising from the sudden and reasonably unforeseeable events beyond the control of the source, including natural disasters, 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 upset condition. An emergency shall not include non-compliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(A) An emergency constitutes a complete affirmative defense to an action brought for non-compliance with such technology-based limitations if the following conditions are met. The affirmative defense of emergency shall demonstrate through properly signed contemporaneous operating logs, or such other relevant evidence that:

- (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (2) The permitted facility was at the time being properly operated;
- (3) 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
- (4) The permittee submitted notice of the upset to the Division by the end of the next business day after the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

(B) [RESERVED]