

Arkansas Regulation No. 19, Regulations of the Arkansas Plan of Implementation for Air Pollution Control

CHAPTER 6: UPSET AND EMERGENCY CONDITIONS

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Reg. 19.601 Upset conditions

For purposes of this paragraph, “upset condition” shall be defined as exceedences of applicable emission limitations lasting 30 or more minutes, in the aggregate, during a 24-hour period, unless otherwise specified in an applicable permit or regulation (such as NSPS regulations). All upset conditions, resulting in violation of an applicable permit or regulation, shall be reported to the Department. Any source exceeding an emission limit established by the Plan or applicable permit shall be deemed in violation of said Plan or permit and shall be subject to enforcement action. The Department 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 Department 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 Department by the end of the next business day after the discovery of the occurrence.
- (C) Submits to the Department, 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.

Reg. 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 noncompliance 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 noncompliance 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 Department 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]