

Texas Chapter 101 - General Air Quality Rules

SUBCHAPTER F : EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP, AND SHUTDOWN ACTIVITIES

DIVISION 3 : OPERATIONAL REQUIREMENTS, DEMONSTRATIONS, AND ACTIONS TO REDUCE EXCESSIVE EMISSIONS, SIP effective 2011-01-10.

Outline:

§101.221. Operational Requirements. G-80, TXd120, TX044

§101.222. Demonstrations. G-80, TXd120, TX044

NOT IN SIP: 101.222(h), 101.222(i), 101.222(j)

§101.223. Actions to Reduce Excessive Emissions. G-80, TXd120, TX044

§101.224. Temporary Exemptions During Drought Conditions. G-72, TXd53

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§101.221. Operational Requirements. G-80, TXd120, TX044

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§101.223. Actions to Reduce Excessive Emissions. G-80, TXd120, TX044

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§101.224. Temporary Exemptions During Drought Conditions. G-71, TXd53

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CHAPTER 101: GENERAL AIR QUALITY RULES

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP,
AND SHUTDOWN ACTIVITIES**

**DIVISION 3: OPERATIONAL REQUIREMENTS, DEMONSTRATIONS, AND ACTIONS TO
REDUCE EXCESSIVE EMISSIONS**

§§101.221 - 101.223

§101.221. Operational Requirements.

(a) All pollution emission capture equipment and abatement equipment must be maintained in good working order and operated properly during facility operations. Emission capture and abatement equipment must be considered to be in good working order and operated properly when operated in a manner such that each facility is operating within authorized emission limitations.

(b) Smoke generators and other devices used for training inspectors in the evaluation of visible emissions at a training school approved by the commission are not required to meet the allowable emission levels set by the rules, but must be located and operated such that a nuisance is not created at any time.

(c) Equipment, machines, devices, flues, and/or contrivances built or installed to be used at a domestic residence for domestic use are not required to meet the allowable emission levels set by the rules unless specifically required by a particular rule.

(d) Sources emitting air contaminants that cannot be controlled or reduced due to a lack of technological knowledge may be exempt from the applicable rules when so determined and ordered by

the commission. The commission may specify limitations and conditions as to the operation of such exempt sources. The commission will not exempt sources from complying with any federal requirements, including New Source Performance Standards (40 Code of Federal Regulations Part 60) and National Emission Standards for Hazardous Air Pollutants (40 Code of Federal Regulations Parts 61 and 63).

(e) The owner or operator of a facility has the burden of proof to demonstrate that the applicable criteria identified in §101.222(relating to Demonstrations) are satisfied.

(f) This section does not limit the commission's power to require corrective action as necessary to minimize emissions, or to order any action indicated by the circumstances to control a condition of air pollution.

§101.222. Demonstrations.

(a) Excessive emissions event determinations. The executive director shall determine when emissions events are excessive. To determine whether an emissions event or emissions events are excessive, the executive director will evaluate emissions events using the following criteria:

(1) the frequency of the facility's emissions events;

(2) the cause of the emissions event;

(3) the quantity and impact on human health or the environment of the emissions event;

(4) the duration of the emissions event;

(5) the percentage of a facility's total annual operating hours during which emissions events occur; and

(6) the need for startup, shutdown, and maintenance activities.

(b) Non-excessive upset events. Upset events that are determined not to be excessive emissions events are subject to an affirmative defense to all claims in enforcement actions brought for these events, other than claims for administrative technical orders and actions for injunctive relief, for which the owner or operator proves all of the following:

(1) the owner or operator complies with the requirements of §101.201 of this title (relating to Emissions Event Reporting and Recordkeeping Requirements). In the event the owner or operator fails to report as required by §101.201(a)(2) or (3), (b), or (e) of this title, the commission will initiate enforcement for such failure to report and for the underlying emissions event itself. This subsection does not apply when there are minor omissions or inaccuracies that do not impair the commission's ability to review the event according to this rule, unless the owner or operator knowingly or intentionally falsified the information in the report;

(2) the unauthorized emissions were caused by a sudden, unavoidable breakdown of equipment or process, beyond the control of the owner or operator;

(3) the unauthorized emissions did not stem from any activity or event that could have been foreseen and avoided or planned for, and could not have been avoided by better operation and maintenance practices or technically feasible design consistent with good engineering practice;

(4) the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions and reducing the number of emissions events;

(5) prompt action was taken to achieve compliance once the operator knew or should have known that applicable emission limitations were being exceeded, and any necessary repairs were made as expeditiously as practicable;

(6) the amount and duration of the unauthorized emissions and any bypass of pollution control equipment were minimized and all possible steps were taken to minimize the impact of the unauthorized emissions on ambient air quality;

(7) all emission monitoring systems were kept in operation if possible;

(8) the owner or operator actions in response to the unauthorized emissions were documented by contemporaneous operation logs or other relevant evidence;

(9) the unauthorized emissions were not part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance;

(10) the percentage of a facility's total annual operating hours during which unauthorized emissions occurred was not unreasonably high; and

(11) the unauthorized emissions did not cause or contribute to an exceedance of the national ambient air quality standards (NAAQS), prevention of significant deterioration (PSD) increments, or to a condition of air pollution.

(c) Unplanned maintenance, startup, or shutdown activity. Emissions from an unplanned maintenance, startup, or shutdown activity that are determined not to be excessive are subject to an affirmative defense to all claims in enforcement actions brought for these activities, other than claims for administrative technical orders and actions for injunctive relief, for which the owner or operator proves the emissions were from an unplanned maintenance, startup, or shutdown activity, as defined in §101.1 of this title (relating to Definitions), and all of the following:

(1) for a scheduled maintenance, startup, or shutdown activity, the owner or operator complies with the requirements of §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements). For an unscheduled maintenance, startup, and shutdown activity, the owner or operator complies with the requirements of §101.201 of this title and demonstrates that reporting under §101.211(a) of this title was not reasonably possible. Failure to report information that does not impair the commission's ability to review the activity, such as minor omissions or inaccuracies, will not result in enforcement action and loss of opportunity to claim the affirmative defense, unless the owner or operator knowingly or intentionally falsified the information in the report;

(2) the periods of unauthorized emissions from any unplanned maintenance, startup, or shutdown activity could not have been prevented through planning and design;

(3) the unauthorized emissions from any unplanned maintenance, startup, or shutdown activity were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(4) if the unauthorized emissions from any unplanned maintenance, startup, or shutdown activity were caused by a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(5) the facility and air pollution control equipment were operated in a manner consistent with good practices for minimizing emissions;

(6) the frequency and duration of operation in an unplanned maintenance, startup or shutdown mode resulting in unauthorized emissions were minimized and all possible steps were taken to minimize the impact of the unauthorized emissions on ambient air quality;

(7) all emissions monitoring systems were kept in operation if possible;

(8) the owner or operator actions during the period of unauthorized emissions from any unplanned maintenance, startup, or shutdown activity were documented by contemporaneous operating logs or other relevant evidence; and

(9) unauthorized emissions did not cause or contribute to an exceedance of the NAAQS, PSD increments, or a condition of air pollution.

(d) Excess opacity events. Excess opacity events due to an upset that are subject to §101.201(e) of this title, or for other opacity events where there was no emissions event, are subject to an affirmative defense to all claims in enforcement actions for these events, other than claims for administrative technical orders and actions for injunctive relief, for which the owner or operator proves all of the following:

(1) the owner or operator complies with the requirements of §101.201 of this title.

Failure to report information that does not impair the commission's ability to review the event, such as minor omissions or inaccuracies, will not result in enforcement action and loss of opportunity to claim the affirmative defense, unless the owner or operator knowingly or intentionally falsified the information in the report;

(2) the opacity was caused by a sudden, unavoidable breakdown of equipment or process beyond the control of the owner or operator;

(3) the opacity did not stem from any activity or event that could have been foreseen and avoided or planned for, and could not have been avoided by better operation and maintenance practices or by technically feasible design consistent with good engineering practice;

(4) the air pollution control equipment or processes were maintained and operated in a manner consistent with good practice for minimizing opacity;

(5) prompt action was taken to achieve compliance once the operator knew or should have known that applicable opacity limitations were being exceeded and any necessary repairs were made as expeditiously as practicable;

(6) the amount and duration of the opacity event and any bypass of pollution control equipment were minimized and all possible steps were taken to minimize the impact of the opacity on ambient air quality;

(7) all emission monitoring systems were kept in operation if possible;

(8) the owner or operator actions in response to the opacity event were documented by contemporaneous operation logs or other relevant evidence;

(9) the opacity event was not part of a frequent or recurring pattern indicative of inadequate design, operation, or maintenance; and

(10) the opacity event did not cause or contribute to a condition of air pollution.

(e) Opacity events resulting from unplanned maintenance, startup, or shutdown activity.

Excess opacity events, or other opacity events where there was no emissions event, that result from an unplanned maintenance, startup, or shutdown activity that are determined not to be excessive are subject to an affirmative defense to all claims in enforcement actions brought for these activities, other than claims for administrative technical orders and actions for injunctive relief, for which the owner or operator proves the opacity resulted from an unplanned maintenance, startup, or shutdown activity, as defined in §101.1 of this title, and all of the following:

(1) for excess opacity events that result from a scheduled maintenance, startup, or shutdown activity, the owner or operator complies with the requirements of §101.211 of this title. For excess opacity events that result from an unscheduled maintenance, startup, and shutdown activity, the

owner or operator complies with the requirements of §101.201 of this title and demonstrates that reporting pursuant to §101.211(a) of this title was not reasonably possible. Failure to report information that does not impair the commission's ability to review the event, such as minor omissions or inaccuracies, will not result in enforcement action and loss of opportunity to claim the affirmative defense, unless the owner or operator knowingly or intentionally falsified the information in the report;

(2) the opacity was caused by a sudden, unavoidable breakdown of equipment or process beyond the control of the owner or operator;

(3) the periods of opacity could not have been prevented through planning and design;

(4) the opacity was not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(5) if the opacity event was caused by a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(6) the facility and air pollution control equipment were operated in a manner consistent with good practices for minimizing opacity;

(7) the frequency and duration of operation in a startup or shutdown mode resulting in opacity were minimized;

(8) all emissions monitoring systems were kept in operation if possible;

(9) the owner or operator actions during the opacity event were documented by contemporaneous operating logs or other relevant evidence; and

(10) the opacity event did not cause or contribute to a condition of air pollution.

(f) Obligations. Subsections (b) - (e) and (h) of this section do not remove any obligations to comply with any other existing permit, rule, or order provisions that are applicable to an emissions event or a maintenance, startup, or shutdown activity. Any affirmative defense provided by subsections (b) - (e) and (h) applies only to violations of state implementation plan requirements. An affirmative defense cannot apply to violations of federally promulgated performance or technology based standards, such as those found in 40 Code of Federal Regulations Parts 60, 61, and 63. The affirmative defense is available only for emissions that have been reported or recorded.

(g) Frequent or recurring pattern. Evidence of any past event subject to subsections (b) - (e) of this section is admissible and relevant to demonstrate a frequent or recurring pattern of events, even if all of the criteria in that subsection are proven.

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NOT IN SIP	(h) Planned maintenance, startup, or shutdown activity. Unauthorized emissions or opacity events from a maintenance, startup, or shutdown activity that are not unplanned that have been reported or recorded in compliance with §101.211 of this title are subject to an affirmative defense to all claims in enforcement actions brought for these activities, other than claims for administrative technical orders and actions for injunctive relief, for which the owner or operator proves all of the criteria listed in subsection (c)(1) - (9) of this section for emissions, or subsection (e)(1) - (9) of this section for opacity events and the following:	NOT IN SIP
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(1) the owner or operator has filed an application to authorize the emissions or opacity by the following dates:

(A) for facilities in Standard Industrial Classification (SIC) code 2911 (Petroleum Refining), one year after the effective date of this section;

(B) for facilities in major group SIC code 28 (Chemicals and Allied Products), except SIC code 2895, two years after the effective date of this section;

(C) for facilities in SIC code 2895 (Carbon Black), four years after the effective date of this section;

(D) for facilities in SIC code 4911 (Electric Services), five years after the effective date of this section;

(E) for facilities in SIC codes 1311 (Crude Petroleum and Natural Gas), 1321 (Natural Gas Liquids), 4612 (Crude Petroleum Pipelines), 4613 (Refined Petroleum Pipelines), 4922 (Natural Gas Transmission), 4923 (Natural Gas Transmission and Distribution), six years after the effective date of this section; and

(F) for all other facilities, seven years after the effective date of this section.

(2) an owner or operator who filed an application listed in paragraph (1) of this subsection has provided prompt response for any requests by the executive director for information regarding that application.

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~~(i) The affirmative defense in subsection (h) of this section will expire upon the earlier of one year after the application deadlines in subsection (h)(1)(A) and (C) - (F) of this section, or the issuance or denial of a permit applied for under subsection (h)(1)(A) and (C) - (F) of this section, or avoidance of an application filed under subsection (h)(1)(A) and (C) - (F) of this section. The affirmative defense in subsection (h) of this section will expire upon the earlier of two years after the application deadline in subsection (h)(1)(B) of this section or the issuance or denial of a permit applied for under subsection (h)(1)(B) of this section, or avoidance of an application filed under subsection (h)(1)(B) of this section. If the permit application remains pending after the affirmative defense expires, the commission will use enforcement discretion for all claims in enforcement actions brought for excess emissions from planned maintenance, startup, or shutdown activities, other than claims for administrative technical orders and actions for injunctive relief for which the owner or operator proves the criteria in subsections (c) and (e) of this section, until the issuance or denial of a permit applied for under subsection (h)(1) of this section, or avoidance of an application filed under subsection (h)(1) of this section.~~

~~(j) The executive director shall process permit applications referenced in subsection (h) of this section in accordance with the schedule set out in §116.114 of this title (relating to Application Review Schedule).~~

§101.223. Actions to Reduce Excessive Emissions.

(a) The executive director will provide written notification to an owner or operator of a facility upon determination that a facility has had one or more excessive emissions events. The written notification must contain, at a minimum, a description of the emissions events that were determined to be excessive and the time period when those excessive emissions events were evaluated. Upon receipt of this notice, the owner or operator of the facility must take action to reduce emissions and shall either

file a corrective action plan (CAP) or, if the emissions are sufficiently frequent, quantifiable, and predictable, in which case the owner or operator may file a letter of intent to obtain authorization from the commission for emissions from such events, in lieu of a CAP.

(1) When a CAP is required, the owner or operator must submit a CAP to the commission office for the region and local air pollution agency with jurisdiction in which the facility is located within 60 days after receiving notification from the executive director that a facility has had one or more excessive emissions events. The 60-day period may be extended once for up to 15 days by the executive director. The CAP must, at a minimum:

(A) identify the cause or causes of each excessive emissions event, including all contributing factors that led to each emissions event;

(B) specify the control devices or other measures that are reasonably designed to prevent or minimize similar emissions events in the future;

(C) identify operational changes the owner or operator will take to prevent or minimize similar emissions events in the future; and

(D) specify time frames within which the owner or operator will implement the components of the CAP.

(2) An owner or operator must obtain commission approval of a CAP no later than 120 days after the commission receives the first CAP submission from an owner or operator. If not disapproved within 45 days after initial filing, the CAP must be deemed approved. The owner or

operator of a facility must respond completely and adequately, as determined by the executive director, to all written requests for information concerning its CAP within 15 days after the date of such requests, or by any other deadline specified in writing. An owner or operator of a facility may request written approval of a CAP, in which case the commission shall take final written action to approve or disapprove the plan within 120 days from the receipt of such request. Once approved, the owner or operator must implement the CAP in accordance with the approved schedule. The implementation schedule is enforceable by the commission. The commission may require the owner or operator to revise a CAP if the commission finds the plan, after implementation begins, to be inadequate to prevent or minimize emissions or emissions events. If the CAP is disapproved, or determined to be inadequate to prevent or minimize excessive emissions events, the executive director shall identify deficiencies in the CAP and state the reasons for disapproval of the CAP in a letter to the owner or operator. If the commission finds a CAP inadequate to prevent or minimize excessive emissions events after implementation begins, an owner or operator must file an amended CAP within 60 days after written notification by the executive director.

(3) If the emissions from excessive emissions events are sufficiently frequent, quantifiable, and predictable, and an owner or operator of a facility elects to file a letter of intent to obtain authorization from the commission for the emissions from excessive emissions events, the owner or operator must file such letter within 30 days of the notification that a facility has had one or more excessive emissions events. If the commission denies the requested authorization, the owner or operator of a facility shall file a CAP in accordance with paragraph (1) of this subsection within 45 days after receiving notice of the commission denial.

(A) If the intended authorization is a permit, the owner or operator must file a permit application with the executive director within 120 days after the filing of the letter of intent.

The owner or operator of a facility must respond completely and adequately, as determined by the executive director, to all written requests for information concerning its permit application within 15 days after the date of such requests, or by any other deadline specified in writing.

(B) If the intended authorization is a permit by rule or standard permit, the owner or operator must obtain authorization within 120 days after filing of the letter of intent.

(b) The executive director, after a review of the excessive emissions events determinations made at a regulated entity as defined in §101.1 of this title (relating to Definitions), may forward these determinations to the commission requesting that it issue an order finding that the regulated entity has chronic excessive emissions events. Orders issued by the commission under this section will be part of the entity's compliance history as provided in Chapter 60 of this title (relating to Compliance History). The commission may issue an order finding that a regulated entity has chronic excessive emissions events after considering the following factors:

(1) the size, nature, and complexity of the regulated entity operations;

(2) the frequency of emissions events at the regulated entity; and

(3) the reason or reasons for excessive emissions event determinations at that regulated entity.

(c) If an emissions event recurs because an owner or operator fails to take corrective action as required and within the time specified by a CAP approved by the commission, the emissions event is

excessive and the affirmative defenses in §101.222 of this title (relating to Demonstrations) do not apply.

(d) Nothing in this section will limit the commission's ability to bring enforcement actions for violations of the Texas Clean Air Act or rules promulgated thereunder, including enforcement actions to require actions to reduce emissions from excessive emissions events.

§101.224. Temporary Exemptions During Drought Conditions.

As adopted by TNRCC August 21, 2002, effective September 12, 2002 (G-72).
Approved by EPA March 30, 2005 (70 FR 16129) effective April 29, 2005
(TXd53).

Owners and operators of sources located in an area or region which has been classified by the National Weather Service as being in a severe or extreme drought condition under the Palmer Drought Severity Index for at least 30 days that are required to control emissions through the application or use of water may request a temporary exemption from any commission air quality rule, permit condition, permit representation, standard exemption condition, or commission order. This section does not allow for an exemption from any federal requirement.

(1) The request must be submitted in writing to the Office of Permitting, Remediation, and Registration, Air Permits Division, and include at a minimum the following information:

(A) the site-specific circumstances that prevent the continued or limited use of water;

(B) the specific rule, permit condition, permit representation, standard exemption condition, or commission order from which an exemption is being requested; and

(C) the reasonably available alternative control measures which will be undertaken to minimize emissions.

(2) The executive director may authorize, by written permission, a temporary exemption of up to 120 days upon finding that:

(A) the source or facility is located in an area or region which has been classified as severe or extreme for at least 30 days under the Palmer Drought Severity Index;

(B) such an exemption is necessary to aid in the conservation of the area's water resources;

(C) any additional emissions which may result from the exemption will not cause a significant health concern in the opinion of the executive director; and

(D) the requesting owner and operator of the source will use reasonably available alternative control measures to minimize emissions during this time.

(3) The executive director may specify alternative procedures or methods for controlling emissions when an exemption is granted under this section.

(4) The executive director may issue one 60-day extension of an exemption authorized under this section. A commission order is required for any exemption which would extend beyond a total of 180 days and approval shall be based on the criteria contained in this section. The executive director shall notify the EPA of exemptions which will be considered for extension beyond 180 days. The executive director shall notify the EPA at least 30 days prior to commission consideration of such an extension.

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