

The document below showed the differences between the existing language in WAC 1730400-107, and a first proposal to reorder and reorganize this section of the rule. Concepts that were previously found in one paragraph have probably moved to another section of the proposal. But the rule is basically the same. For instance the concept found in the current paragraph (2) is now in paragraph (3). The current paragraph (5) is added to the proposed paragraph (6).

WAC 173-400-107

Excess emissions.

(1) ~~The owner or operator of a source shall have the burden of proving to ecology or the authority or the decision-making authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsections (4), (5) and (6) of this section.~~ This provision sets the criteria by which ecology or the authority may provide an affirmative defense to a penalty action by the source's permitting authority for emissions in excess of emission standards or limitations provided that all of the requirements in subsection (4), (5) and (6) must be met. This provision applies to all emission standards or limitations except for those that are:

(a) Regulated under 40 CFR parts 60, 61, 62 or 63 or a permitting authority's adoption by reference of such federal standards,

(b) Promulgated under Titles IV or VI of the Clean Air Act, or a permitting authority's adoption by reference of such federal standards, or

(c) Contained in permits issued under the PSD rules. Nothing in the previous sentence precludes the permitting authority from including appropriate excess emissions provisions in a PSD permit, in which case the permit-specific excess emission provisions would apply.

(2) ~~Excess emissions determined to be unavoidable under the procedures and criteria in this section shall be excused and not subject to penalty. The permitting authority must not provide the affirmative defense if an exceedance of any relevant ambient air quality standard has occurred and can be attributed to the source.~~ The permitting authority must not provide the affirmative defense if an exceedance of any relevant ambient air quality standard has occurred and can be attributed to the source.

(3) ~~Excess emissions which represent a potential threat to human health or safety or which the owner or operator of the source believes to be unavoidable shall be reported to ecology or the authority as soon as possible. Other excess emissions shall be reported within thirty days after the end of the month during which the event occurred or as part of the routine emission monitoring reports. Upon request by ecology or the authority, the owner(s) or operator(s) of the source(s) shall submit a full written report including the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.~~ Excess emissions determined to be unavoidable under the procedures and criteria in this section are subject to injunctive relief, but are not be subject to penalty by the permitting authority.

(4) ~~Excess emissions due to startup or shutdown conditions shall be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately~~

~~demonstrates that the excess emissions could not have been prevented through careful planning and design and if a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage.~~ Reporting and Recording of Excess emissions:

(a) Excess emissions at a chapter 401, source must be recorded and reported as required in WAC 173-401-615(3) in addition to the requirements of this section.

(b) Excess emissions which represent a potential threat to human health and safety must be reported to the permitting authority as soon as possible, but in no case later than 12 hours after the excess emissions were discovered. A follow-up written report must be submitted within 30 days of the when the excess emissions were discovered.

(c) Excess emissions which do not represent a potential threat to human health or safety, shall be reported to the permitting authority within thirty days after the end of the month in which the excess emissions were discovered.

(d) A written contemporaneous record of all reported excess emissions must be kept. The record must include estimated quantity of emissions released, the probable cause of such excess emissions, and any corrective actions or preventive measures taken.

(e) Written reports must include the date, time, known causes, the corrective actions taken, a copy of the written contemporaneous record, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

~~(5) Maintenance. Excess emissions due to scheduled maintenance shall be considered unavoidable if the source reports as required under subsection (3) of this section and adequately demonstrates that the excess emissions could not have been avoided through reasonable design, better scheduling for maintenance or through better operation and maintenance practices.~~ Excess emissions due to startup or shutdown conditions are considered unavoidable if the required records and reports adequately demonstrate

(a) that the excess emissions could not have been prevented through careful planning and design, and

(b) were not the result of inadequate design, operations and maintenance, and

(c) the emissions were minimized consistent with safety and good air pollution control practice during the start up and shutdown period, and if a bypass of control equipment occurs, that such bypass is necessary to prevent loss of life, personal injury, or severe property damage, and

(d) steps taken to minimize the impact of the excess emissions on ambient air quality, and

(e) all emission monitoring systems were kept in operation unless the shutdown is necessary to prevent loss of life, personal injury, or severe property damage.

(6) Excess emissions due to upsets , including upsets during maintenance, ~~shall~~ will be considered unavoidable provided the source reports as required under subsection (3) of this section and adequately demonstrates that:

(a) The event was beyond the reasonable control of the owner or operator, not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition; and

(b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(c) The operator took immediate and appropriate corrective action in a manner consistent with safety and good air pollution control practice for minimizing emissions during the event, taking

into account the total emissions impact of the corrective action, including slowing or shutting down the emission unit as necessary to minimize emissions, when the operator knew or should have known that an emission standard or permit condition was being exceeded.

(d) All monitoring systems and pollution control systems were kept operating. The monitoring systems and control devices may only be bypassed or shut down if it is necessary to prevent loss of life, personal injury, or severe property damage; and

(e) Repairs were made in an expeditious fashion when the operator knew or that applicable emission limitations were being exceeded.

(f) Steps were taken to minimize the impact of the excess emissions on ambient air quality.