

LANE REGIONAL AIR PROTECTION AGENCY

TITLE 36 Excess Emissions

Following the reporting and recordkeeping prescribed herein or approval of procedures for startup, shutdown or maintenance shall not absolve permittees from enforcement action for conditions resulting in excess emissions.

Section 36-001 General Policy and Discussion

1. Emissions of air contaminants in excess of applicable standards or permit conditions are unauthorized and are subject to enforcement action, pursuant to sections 36-010 through 36-030. These rules apply to any source which emits air contaminants in violation of any applicable air quality rule or permit condition, including but not limited to excess emissions resulting from the breakdown of air pollution control equipment or operating equipment, process upset, startup, shutdown, or scheduled maintenance. Sources that do not emit air contaminants in excess of any applicable air quality rule or permit condition are not subject to the recordkeeping and reporting requirements in LRAPA Title 36.
2. The purpose of these rules is to:
 - A. Require that, where applicable, all excess emissions be reported by sources to LRAPA immediately;
 - B. Require owner or operator to submit information and data regarding conditions which resulted or could result in excess emissions;
 - C. Identify criteria to be used by LRAPA for determining whether penalty action will be taken against an owner or operator for excess emissions; and
 - D. Provide owners and operators an affirmative defense to a penalty action when noncompliance with technology-based limits is due to an emergency pursuant to LRAPA 36-040.

Section 36-005 Definitions

The following definitions are relevant for the purposes of Title 36, only. Additional definitions can be found in Title 12, "Definitions."

1. "Event" means excess emissions that arise from the same condition and occur during a single calendar day or continue into subsequent calendar days.
2. "Excess Emissions" means emissions which are in excess of a permit limit or any applicable air quality rule

3. "Immediately" means one of the following:
 - A. During LRAPA's normal work hours, 8:00 a.m. to 5:00 p.m. Monday through Friday, report is to be made as soon as possible but no more than one (1) hour after the beginning of the excess emissions; or
 - B. During LRAPA's off-duty hours or on weekends or holidays, report is to be made as soon as possible but no more than one (1) hour after the beginning of the excess emissions, using LRAPA's electronic telephone answering equipment. If the person reporting the incident is unable to access the telephone answering equipment because of overloaded telephone circuits or telephone equipment malfunction, the report must be made to the LRAPA business office at the beginning of the next working day.
4. "Large Source", as used in this title, means any stationary source required to maintain a Title V Operating Permit or whose actual emissions or potential controlled emissions while operating full time at the design capacity are equal to or exceed 100 tons per year of any regulated air pollutant, or which is subject to a National Emissions Standard for Hazardous Air Pollutants (NESHAP). Where PSELs have been incorporated into the ACDP, the PSEL will be used to determine actual emissions.
5. "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.
6. "Shutdown" means that time during which normal operation of an air contaminant source or emission control equipment is terminated.
7. "Small Source" means any stationary source with a simple or standard ACDP.
8. "Startup" means that time during which an air contaminant source or emission control equipment is brought into normal operation.
9. "Unavoidable" or "could not be avoided" means events which are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment.
10. "Upset" or "Breakdown" means any failure or malfunction of any pollution control equipment or process equipment or situation that may cause excess emissions.

Section 36-010 Planned Startup and Shutdown

1. This rule applies to any source where startup or shutdown of a production process or system may result in excess emissions and:
 - A. Which is a major source; or

- B. Which is in a non-attainment or maintenance area for the pollutant which may constitute excess emissions; or
 - C. From which LRAPA requires the application in subsection 2 of this rule.
2. LRAPA approval shall be required of the procedures that will be used by the owner or operator to minimize excess emissions during startup/shutdown. Approval of procedures is required prior to a first-time occurrence of a startup or shutdown event to which the procedures apply and prior to modifying previously approved procedures. Applications for approval shall be submitted and received by LRAPA in writing at least seventy-two (72) hours prior to the event, and shall include the following:
 - A. The reasons why the excess emissions during startup and shutdown will not be avoidable;
 - B. Identification of the specific production process or system causing the excess emissions;
 - C. The nature of the air contaminants likely to be emitted, and an estimate of the amount and duration of the excess emissions; and
 - D. Identification of specific procedures to be followed which will minimize excess emissions at all times.
 3. Approval of the startup/shutdown procedures by LRAPA will be based upon determination that said procedures are consistent with good pollution control practices and will minimize emissions during such period, to the extent practicable, and that no adverse health impact on the public will occur. The owner or operator shall record all excess emissions in the excess emissions log as required in subsection 36-025-3. Approval of the procedures does not shield the owner or operator from an enforcement action, but LRAPA in determining whether a penalty action is appropriate will consider whether the procedures were followed.
 4. Once startup/shutdown procedures are approved, the owner or operator is not required to notify LRAPA prior to a planned startup or shutdown event unless it results in excess emissions.
 5. When required by subsection 4 of this rule, notification shall be made in accordance with Section 36-020-1.A.
 6. An owner or operator who either failed to obtain approval as required in subsection 2, above, shall immediately notify LRAPA by telephone of the startup/shutdown event, and shall be subject to the requirements under All Other Excess Emissions in Section 36-020.
 7. LRAPA may revoke or require modifications to previously approved procedures at any time by written notification to the owner or operator.

8. No startup or shutdown that may result in excess emissions associated with the approved procedures in section (3) of this rule are allowed shall occur during any period in which an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency has been declared, or during an announced Yellow, Stage I Red, or Stage II Red woodstove advisory period within areas designated by LRAPA as PM₁₀ Nonattainment Areas.

Section 36-015 Scheduled Maintenance

1. Where it is anticipated that shutdown, by-pass, or operation at reduced efficiency of air pollution control equipment for necessary scheduled maintenance may result in excess emissions, the owner or operator must obtain prior LRAPA approval of new or revised procedures that will be used to minimize excess emissions. Application for approval of procedures associated with scheduled maintenance shall be submitted and received by LRAPA in writing at least seventy-two (72) hours prior to the event, and shall include the following:
 - A. The reasons explaining the need for maintenance, including why it would be impractical to shut down the source operation during the period, and why the by-pass or reduced efficiency could not be avoided through better scheduling for maintenance or through better operation and maintenance practices;
 - B. Identification of the specific production or emission control equipment or system to be maintained;
 - C. The nature of the air contaminants likely to be emitted during the maintenance period, and the estimated amount and duration of the excess emissions, including measures such as the use of overtime labor and contract services and equipment that will be taken to minimize the length of the maintenance period; and
 - D. Identification of specific procedures to be followed which will minimize excess emissions at all times.
2. Approval of the above procedures by LRAPA shall be based upon determination that said procedures are consistent with good pollution control practices and will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The owner or operator shall record all excess emissions in the excess emissions log as required in Section 36-025-3. Approval of the above procedures does not shield the owner or operator from an enforcement action, but whether the procedures were followed will be considered by LRAPA in determining whether a penalty action is appropriate.
3. In cases where maintenance occurs on a periodic or regular schedule, once maintenance procedures are approved, owners or operators shall not be required to notify LRAPA of a scheduled maintenance event unless it results in excess emissions.

4. When required by subsection 3. of this rule, notification shall be made in accordance with Section 36-020(1)(a).
5. LRAPA may revoke or require modifications to previously approved procedures at any time by written notification to the owner or operator.
6. No scheduled maintenance associated with the approved procedures in subsection 2 of this rule which is likely to result in excess emissions shall occur during any period in which an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency has been declared, or during an announced Yellow, Stage I Red, or Stage II Red woodstove advisory period, in areas determined by LRAPA as PM₁₀ Nonattainment Areas.
7. The owner or operator is subject to the requirements under All Other Excess Emissions in Section 36-020 if the owner or operator fails to obtain LRAPA approval of maintenance procedures in accordance with section (1) of this rule.

Section 36-020 All Other Excess Emissions

1. For all other excess emissions not addressed in Sections 36-010, 36-015, or 36-040, the following requirements apply:
 - A. The owner or operator of a large source, as defined by Section 36-005-4, must immediately notify LRAPA the first onset per calendar day of any excess emissions event.
 - B. The owner or operator, of a small source, as defined by Section 36-005-8, need not notify LRAPA of excess emissions events immediately unless otherwise required by permit condition, written notice by LRAPA, or if the excess emission is of a nature that could endanger public health.
 - C. Additional reporting and recordkeeping requirements are specified in Section 36-025.
2. During any period of excess emissions, LRAPA may require that an owner or operator immediately reduce or cease operation of the equipment or facility until such time as the condition causing the excess emissions has been corrected or brought under control. Such action by LRAPA would be taken upon consideration of the following factors:
 - A. Whether potential risk to the public or environment exists;
 - B. Whether any Air Pollution Alert, Warning, Emergency, or yellow or red woodstove curtailment period exists;
 - C. Whether shutdown could result in physical damage to the equipment or facility, or cause injury to employees; or
 - D. Whether continued excess emissions are determined by LRAPA to be avoidable.

3. In the event of an on-going period of excess emissions, the owner or operator shall cease operation of the equipment or facility no later than forty-eight (48) hours after the beginning of the excess emission period, if the condition causing the emissions is not corrected within that time. The owner or operator need not cease operation if it can obtain LRAPA approval of procedures that will be used to minimize excess emissions until such time as the condition causing the excess emissions is corrected or brought under control. Approval of these procedures shall be based on the following information supplied to the LRAPA:
 - A. The reasons why the condition(s) causing the excess emissions can not be corrected or brought under control. Such reasons shall include, but not be limited to, equipment availability and difficulty of repair or installation.
 - B. Information as required in Section 36-010-2.B, C and D or Section 36-015-1.B., C., and D. as appropriate.
4. Approval of the above procedures by LRAPA shall be based upon determination that said procedures are consistent with good pollution control practices and will minimize emissions during such period to the extent practicable, and that no adverse health impact on the public will occur. The owner or operator must record all excess emissions in the excess emission log as required in Section 36-025(3). At any time during the period of excess emissions LRAPA may require the owner or operator to cease operation of the equipment or facility in accordance with Section 36-020(2). Approval of these procedures does not shield the owner or operator from an enforcement action, but whether the procedures were followed will be considered by LRAPA in determining whether a penalty action is appropriate.

Section 36-025 Reporting and Recordkeeping Requirements

1. For any excess emissions event at a source with a Title V permit and for any other source as required by permit, the owner or operator shall, submit a written excess emission report for each calendar day of the event. If required, this report shall be submitted within fifteen (15) days of the date of the event and shall include the following:
 - A. The date and time of the beginning of the excess emissions event and the duration or best estimate of the time until return to normal operation;
 - B. The date and time the owner or operator notified LRAPA of the event;
 - C. The equipment involved;
 - D. Whether the event occurred during startup, shutdown, maintenance, or as a result of a breakdown, malfunction, or emergency;
 - E. Steps taken to mitigate emissions and corrective actions taken;

- F. The magnitude and duration of each occurrence of excess emissions during the course of an event and the increase over normal rates or concentrations as determined by continuous monitoring or a best estimate (supported by operating data and calculations);
 - G. The final resolution of the cause of the excess emissions; and
 - H. Where applicable, evidence supporting any claim that emissions in excess of technology-based limits were due to an emergency pursuant to Section 36-040.
2. Based on the severity of the event, LRAPA may specify a shorter time period for report submittal.
 3. All owners or operators shall keep an excess emissions log of all planned and unplanned excess emissions. The log shall include all pertinent information as required in subsection 1 of this rule and shall be kept by the owner or operator for five (5) calendar years.
 4. At each annual reporting period specified in a permit, or sooner if required by LRAPA, the owner or operator shall submit:
 - A. A copy of the excess emission log entries for the reporting period; and
 - B. Where applicable, current procedures to minimize emissions during startup, shutdown, or maintenance, as outlined in Section 36-010 and Section 36-015. The owner or operator shall specify in writing whether these procedures are new, modified, or have already been approved by LRAPA.

Section 36-030 Enforcement Action Criteria

In determining whether to assess a penalty for excess emissions, LRAPA considers, based upon information submitted by the owner or operator, the following criteria:

1. Whether the owner or operator met the notification, recordkeeping, and reporting requirements of Sections 36-020 and 26-025
2. Whether, during the excess emissions event, the owner or operator took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit.
3. Whether the appropriate remedial action was taken.
4. Whether the owner or operator followed procedures approved by LRAPA for startup, shutdown, or scheduled maintenance.
5. The event was not due to negligent or intentional operation by the owner or operator. For the LRAPA to find that an incident of excess emissions is not due to negligent or intentional operation by the owner or operator, the owner or operator shall demonstrate, upon LRAPA request, that all of the following conditions were met:

- A. The process or handling equipment and the air pollution control equipment were at all times maintained and operated in a manner consistent with good practice for minimizing emissions.
- B. Repairs or corrections were made in an expeditious manner when the operator(s) knew or should have known that emission limits were being or were likely to be exceeded. Expeditious manner may include such activities as use of overtime labor or contract labor and equipment that would reduce the amount and duration of excess emissions.
- C. The event was not one in a recurring pattern of incidents that indicate inadequate design, operation, or maintenance.

Section 36-040 Emergency Provision

- 1. An emergency constitutes an affirmative defense to penalty actions due to non-compliance with technology-based emission limits if the owner or operator notifies LRAPA immediately of the emergency condition and demonstrates through properly signed, contemporaneous operating logs, excess emission logs, or other relevant evidence:
 - A. That an emergency occurred and caused the excess emissions;
 - B. The cause(s) of the emergency;
 - C. The facility was at the time being properly operated;
 - D. During the occurrence of the emergency, the owner or operator took all reasonable steps to minimize levels of excess emissions; and
 - E. The notification to LRAPA contained a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.
- 2. The owner or operator seeking to establish the occurrence of an emergency has the burden of proof by a preponderance of the evidence.
- 3. This provision is in addition to any emergency or any other excess emissions provisions contained in any applicable requirement.