

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 sources 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 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 devices 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 title 36. Emissions in excess of applicable standards are not excess emissions if the standard is in an NSPS or NESHAP and the NSPS or NESHAP exempts startups, shutdowns and malfunctions as defined in the applicable NSPS or NESHAP.
- (2) The purpose of these rules is to:
 - (a) Require that, where applicable, the owner or operator immediately report all excess emissions to LRAPA;
 - (b) Require owner or operator to submit information and data regarding conditions which resulted or could result in excess emissions;
 - (c) Identify criteria for LRAPA to use in determining whether it will take enforcement action against an owner or operator for an excess emission; and
 - (d) Provide owners and operators of sources with LRAPA Title V Operating Permits an affirmative defense to a penalty action when noncompliance with technology-based limits is due to an emergency pursuant to 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."

- (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 other than GHG.
- (7) "Small Source" means any stationary source with a Basic, General, Simple or Standard ACDP.

Section 36-010 Planned Startup and Shutdown

- (1) This section 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 regulated pollutant which may constitute excess emissions; or
 - (c) From which LRAPA requires the application in subsection (2).
- (2) The owner or operator must obtain prior LRAPA authorization of startup and shutdown procedures. The owner or operator must submit to LRAPA a written application for approval of new procedures or modifications to existing procedures. The application must be submitted in time for LRAPA to receive it at least seventy-two (72) hours prior to the first occurrence of a startup or shutdown event to which the procedures apply. The application must:
 - (a) Explain why the excess emissions during startup and shutdown will not be avoidable;
 - (b) Identify the specific production process or system causing the excess emissions;
 - (c) Identify the nature of the air contaminants likely to be emitted, and estimate the amount and duration of the excess emissions; and
 - (d) Identify specific procedures to be followed that will minimize excess emissions at all times during startup and shutdown.
- (3) LRAPA will approve the procedures if it determines that they are consistent with good pollution control practices, 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 emissions log as required in 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 LRAPA approves startup/shutdown procedures, the owner or operator does not have to notify LRAPA of a planned startup or shutdown event unless it results in excess emissions.

- (5) When notice is required by subsection (4), it must be made in accordance with 36-020(1)(a).
- (6) The owner or operator is subject to the requirements under All Other Excess Emissions in 36-020 if the owner or operator fails to obtain LRAPA approval of startup and shutdown procedures in accordance with subsection (2).
- (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 subsection (3) are allowed during any period in which an Air Pollution Alert, Air Pollution Warning, or Air Pollution Emergency has been declared, or during an announced yellow or red woodstove advisory period within areas designated by LRAPA as PM_{2.5} or PM₁₀ nonattainment areas.

Section 36-015 Scheduled Maintenance

- (1) If the owner or operator anticipates that scheduled maintenance of air contaminant sources or air pollution control devices may result in excess emissions, the owner or operator must obtain prior LRAPA authorization of 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 but not limited to: why the maintenance activity is necessary; why it would be impractical to shut down the source operation during the maintenance activity; if applicable, why air pollution control devices must be by-passed or operated at reduced efficiency during the maintenance activity; and why the excess emissions 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 device or system to be maintained;
 - (c) Identification of 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 during the scheduled maintenance.
- (2) LRAPA will approve the procedures if it determines that they are consistent with good pollution control practices, 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 emissions log as required in 36-025(3). Approval of the above procedures does not shield the owner or operator from an enforcement action, but LRAPA will consider whether the procedures were followed in determining whether an enforcement action is appropriate.

- (3) Once maintenance procedures are approved, owners or operators are not be required to notify LRAPA of a scheduled maintenance event unless it results in excess emissions.
- (4) When required by subsection (3), notification must be made in accordance with 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) that is likely to result in excess emissions may 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 or red woodstove advisory period, in areas determined by LRAPA as PM_{2.5} or PM₁₀ nonattainment areas.
- (7) The owner or operator is subject to the requirements under All Other Excess Emissions in 36-020 if the owner or operator fails to obtain LRAPA approval of maintenance procedures in accordance with section (1).

Section 36-020 All Other Excess Emissions

- (1) For all other excess emissions not addressed in 36-010, 36-015, or 36-040, the following requirements apply:
 - (a) The owner or operator of a large source, as defined by 36-005(4), must immediately notify LRAPA the first onset per calendar day of any excess emissions event, unless otherwise specified by a permit condition.
 - (b) The owner or operator, of a small source, as defined by 36-005(7), need not immediately notify LRAPA of excess emissions events 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 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. LRAPA will consider 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 were avoidable.
- (3) If there is an on-going period of excess emissions, the owner or operator must 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 does not have to cease operation if LRAPA approves procedures to minimize excess emissions until the condition causing the excess emissions is corrected or brought under control. Approval of these procedures will be based on the following information supplied to the LRAPA:
 - (a) The reasons why the condition causing the excess emissions cannot be corrected or brought under control, including equipment availability and difficulty of repair or installation; and
 - (b) Information as required in 36-010(2)(b), (c) and (d) or 36-015(1)(b), (c), and (d) as appropriate.
- (4) LRAPA will approve the procedures if it determines that they are consistent with good pollution control practices, 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 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 subsection (2). Approval of these procedures does not shield the owner or operator from an enforcement action, but LRAPA will consider whether the procedures were followed in determining whether enforcement action is appropriate.

Section 36-025 Reporting and Recordkeeping Requirements

- (1) For any excess emissions event at a source with an LRAPA Title V Operating 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 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 must keep an excess emissions log of all planned and unplanned excess emissions. The log shall include all pertinent information as required in subsection (1) 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 LRAPA requires, the owner or operator must submit:
 - (a) A copy of the excess emission log entries for the reporting period, unless previously submitted in accordance with subsection (1); and
 - (b) Where applicable, current procedures to minimize emissions during startup, shutdown, or maintenance, as outlined in 36-010 and 36-015. The owner or operator must 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 take enforcement action for excess emissions, LRAPA considers, based upon information submitted by the owner or operator, the following:

- (1) Whether the owner or operator met the notification, recordkeeping, and reporting requirements of 36-020 and 36-025;
- (2) Whether during the period of the excess emissions event the owner or operator took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other permit requirements;
- (3) Whether the owner or operator took appropriate remedial action;
- (4) Whether the owner or operator followed procedures approved by LRAPA for startup, shutdown, or scheduled maintenance at the time of the excess emissions;
- (5) Whether any federal New Source Performance Standard (NSPS) or National Emission Standard for Hazardous Air Pollutants (NESHAP) applies and whether the excess emission event caused a violation of the federal standard;
- (6) Whether the excess emissions event was due to an emergency; and

- (7) Whether the event was due to the owner's or operator's negligent or intentional operation. For LRAPA to find that an incident of excess emissions is not due to the owner's or operator's negligent or intentional operation, LRAPA may ask the owner or operator to demonstrate that all of the following conditions were met:
- (a) The process or handling equipment and the air pollution control device 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; and
 - (c) The event was not one in a recurring pattern of incidents that indicate inadequate design, operation, or maintenance.

Section 36-040 Emergency as an Affirmative Defense for Title V Permitted Sources

- (1) An emergency constitutes an affirmative defense to penalty actions due to non-compliance with technology-based emission limits in an LRAPA Title V Operating Permit if the owner or operator notifies LRAPA immediately of the emergency condition and provides and demonstrates through properly signed, contemporaneous operating logs, excess emission logs, or other relevant evidence that:
- (a) An emergency occurred and caused the excess emissions;
 - (b) The cause 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.