SECTION 25: [AFFIRMATIVE DEFENSE FOR] EXCESS EMISSIONS [DUE TO MALFUNCTIONS, STARTUP, AND SHUTDOWN]

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25.1 Applicability

[25.1.1 Section 25 establishes affirmative defenses for certain emissions in excess of an emission standard or limitation and applies to all emission standards or limitations except for the following standards or limitations:] The provisions of this regulation apply to emissions in excess of an emission limitation or standard including those that occur during startups, shutdowns or malfunctions for any stationary source of regulated air pollutants located in Clark County, Nevada. (As a local-only rule, nothing in this section limits a federal court’s jurisdiction or enforcement of federal laws and regulations prohibiting excess emissions.)

The provisions associated with unavoidable excess emissions do not apply to emissions limitations or standards:

(a) Promulgated pursuant to Sections 111 or 112 of the Act;

(b) Promulgated pursuant to Titles IV (“Acid Deposition Control”) or VI (“Stratospheric Ozone Protection”) of the Act;

(c) Contained in any Prevention of Significant Deterioration Authority to Construct Permit or Nonattainment Area New Source Review[-(NSR)] Authority to Construct Permit issued directly by[—EPA] U.S. Environmental Protection Agency; or

(d) Included in an Authority to Construct Permit[ in order to satisfy the requirements of Section 12.2.10.] to avoid causing or contributing to air pollution in violation of:

(1) Any National Ambient Air Quality Standards in any air quality control region; or

(2) Any applicable maximum allowable increase over the baseline concentration in any area, as defined by Section 12.2.2(e).

25.2 Definitions

“Excess emissions” means the emission of a regulated air contaminant, including a fugitive emission, that exceeds the quantity, rate, opacity, or concentration specified by an applicable emission limitation or standard required by an air quality regulation or permit condition.

“Malfunction” means any sudden and unavoidable failure of air pollution control equipment, process equipment, or a process beyond the control of the owner or operator, including malfunction during startup or shutdown. A failure that is caused entirely or in part by poor maintenance, careless operation, or any other preventable equipment breakdown shall not be considered a malfunction.
“Shutdown” means the cessation of operation of any air pollution control equipment or process equipment.

“Startup” means the setting into operation of any air pollution control equipment or process equipment.

25.3 Reporting of Excess Emissions

The owner or operator of any stationary source permitted under Sections 12.1, 12.4, 12.5, or 12.11 shall report to the Control Officer emissions in excess of an applicable emission limitation or standard prescribed by the permit in accordance with the following:

(a) For excess emissions that pose a potential, eminent, and substantial danger to public health, safety, or the environment, the owner or operator shall provide:

1. Notification by telephone, facsimile, or electronic mail as soon as possible, but in no case later than 12 hours after the excess emissions are first detected; and

2. A written excess emissions report submitted within 48 hours of the notification.

(b) For all other excess emissions, the owner or operator shall provide:

1. Notification by telephone, facsimile, or electronic mail within 24 hours of the time the excess emissions are first detected; and

2. A written excess emissions report submitted within 72 hours of the notification.

(c) A written excess emissions report shall contain all of the following information, as applicable:

1. The identity of each stack or other emission point where the excess emissions occurred.

2. The magnitude of the excess emissions, expressed in the units of the applicable emission limitation or standard, and the operating data and calculations used in determining the magnitude of the excess emissions.

3. The time and duration (or expected duration) of the excess emissions.
(4) **The identity of the equipment from which the excess emissions emanated.**

(5) **The nature and cause of the emissions, and whether the excess emissions were unavoidable.**

(6) **If the excess emissions were the result of a malfunction, the steps that were taken to remedy the malfunction and the steps that were (or are) being taken to prevent the recurrence of the malfunction.**

(7) **The steps that were (or are) being taken to limit the emissions that exceed the emission limitation or standard.**

(8) **If the source's permit contains procedures governing source operation during periods of startup, shutdown, or malfunction and the excess emissions resulted from startup, shutdown, or malfunction, a list of the steps taken to comply with the permitted procedures.**

(9) **All additional information required by Section 25.4 supporting the claim that the excess emissions were unavoidable.**

(d) **In the case of continuous or recurring excess emissions, the owner or operator shall provide the required notification after excess emissions are first detected and include in the notification an estimate of the time the excess emissions are expected to continue. If excess emissions continue after the estimated time period or there is a change in the nature of the excess emissions as originally reported, the owner or operator shall provide additional notification.**

### [25.2 Affirmative Defense for Malfunctions]

**25.3.2** Emissions in excess of an applicable emission limitation due to a malfunction shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to malfunction has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of Section 25.6 and has demonstrated all of the following:

(a) **The excess emissions resulted from a sudden and unavoidable breakdown of process equipment or air pollution control equipment beyond the reasonable control of the operator;**

(b) **The air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;**
(c) If repairs were required, the repairs were made in an expeditious fashion when the applicable emission limitations were being exceeded. Off-shift labor and overtime were utilized where practicable to ensure that the repairs were made as expeditiously as possible. If off-shift labor and overtime were not utilized, the owner or operator satisfactorily demonstrated that the measures were impracticable;

(d) The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;

(e) All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;

(f) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(g) During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Section 11 that could be attributed to the emitting source;

(h) The excess emissions did not stem from any activity or event that could have been foreseen and avoided, or planned, and could not have been avoided by better operations and maintenance practices;

(i) All emissions monitoring systems were kept in operation if at all practicable; and

(j) The owner or operator’s actions in response to the excess emissions were documented by contemporaneous records.

25.4 Unavoidable Excess Emissions during Startups, Shutdowns, or Malfunctions

25.4.1 Except as provided in Section 25.3.2, and unless otherwise provided for in the applicable requirement, emissions in excess of an applicable emission limitation due to startup and shutdown shall constitute a violation. The owner or operator of a source with emissions in excess of an applicable emission limitation due to startup and shutdown has an affirmative defense to a civil or administrative enforcement proceeding based on that violation, other than a judicial action seeking injunctive relief, if the owner or operator of the source has complied with the reporting requirements of Section 25.6 and has demonstrated all of the following:

(a) If the excess emissions were the result of a bypass of control equipment, the bypass was unavoidable to prevent loss of life, personal injury, or severe damage to air pollution control equipment, production equipment, or other property;
(b) The source’s air pollution control equipment, process equipment, or processes were at all times maintained and operated in a manner consistent with good practice for minimizing emissions;

(c) The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions;

(d) All reasonable steps were taken to minimize the impact of the excess emissions on ambient air quality;

(e) During the period of excess emissions there were no exceedances of the relevant ambient air quality standards established in Section 11 that could be attributed to the emitting source;

(f) All emissions monitoring systems were kept in operation if at all practicable; and

(g) The owner or operator’s actions in response to the excess emissions were documented by contemporaneous records.

25.4.2 If excess emissions occur due to a malfunction during routine startup and shutdown, then those instances shall be treated as other malfunctions subject to Section 25.2.

(a) Emissions in excess of an applicable emission limitation or standard due to startups, shutdowns, or malfunctions shall constitute a violation. The owner or operator has the burden of proving that excess emissions were unavoidable.

(b) Excess emissions due to startups, shutdowns, or malfunctions may be considered unavoidable provided the stationary source has complied with the reporting requirements of Section 25.3 and adequately demonstrated to the Control Officer all of the following, as applicable:

(1) All reasonable and practicable measures within the owner or operator’s control were implemented to prevent the occurrence of the excess emissions.

(2) The excess emissions were not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition.

(3) The occurrence of excess emissions was not part of a recurring pattern indicative of inadequate design, operation, or maintenance.
(4) If the excess emissions were the result of a bypass of control equipment, the bypass was necessary to prevent loss of life, personal injury, or severe damage to air pollution control equipment, production equipment, or other property.

(5) If the emitting equipment could not be shut down during a malfunction to prevent the loss of life, personal injury, or severe property damage, or to minimize overall emissions, repairs were made as expeditiously as possible.

(6) The amount and duration of the excess emissions (including any bypass operation) were minimized to the maximum extent practicable during periods of such emissions.

(7) During the period of excess emissions, there was no evidence of exceedances of the ambient air quality standards that could be attributed to the source.

(8) All emissions monitoring systems were kept in operation to the maximum extent practicable.

(9) When the owner or operator knew or should have known that an emission limitation or standard was being exceeded, the owner or 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 source as necessary to minimize emissions.

(10) All of the owner or operator’s actions in response to the excess emissions were documented by contemporaneous records.

25.5 [Affirmative Defense for Malfunctions During Scheduled Maintenance]

If excess emissions occur due to a malfunction during scheduled maintenance, then those instances will be treated as other malfunctions subject to Section 25.2.

25.6 Demonstration of Reasonable and Practicable Measures

For an affirmative defense under Section 25, the owner or operator of the source shall demonstrate, through submission of the data and information required by Section 25.6, that all reasonable and practicable measures within the owner or operator’s control were implemented to prevent the occurrence of the excess emissions.
25.7 Reporting of Excess Emissions

25.7.1 The owner or operator of any source required to obtain a permit under Section 12 shall report to the Control Officer emissions in excess of an applicable requirement or emission limits prescribed by the permit. The report shall be in two (2) parts:

(a) Notification by telephone, facsimile or electronic mail within twenty-four (24) hours of the time the owner or operator first learns of the excess emissions;

(b) Written notification by submission of an excess emission report containing the information required by Section 25.6.3 within seventy-two (72) hours of the notification required by paragraph (a) above.

25.7.2 The owner or operator of any source required to obtain a permit under Section 12 shall report to the Control Officer emissions that are in excess of an applicable requirement or emission limit that pose a potential imminent and substantial danger to public health, safety or the environment as soon as possible, but in no case later than twelve (12) hours after the deviation is discovered, with a written report submitted within two (2) days of the occurrence.

25.7.3 An excess emission report shall contain the following information:

(a) The identity of each stack or other emission point where the excess emissions occurred;

(b) The magnitude of the excess emissions expressed in the units of the applicable emission limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(c) The time and duration or expected duration of the excess emissions;

(d) The identity of the equipment from which the excess emissions emanated;

(e) The nature and cause of the emissions;

(f) The steps taken if the excess emissions were the result of a malfunction, to remedy the malfunction and the steps taken or planned to prevent the recurrence of the malfunctions;

(g) The steps that were or are being taken to limit the excess emissions; and

(h) If the source's permit contains procedures governing source operation during periods of startup or malfunction and the excess emissions
resulted from startup or malfunction, a list of the steps taken to comply with the permit procedures.

**25.7.4** In the case of continuous or recurring excess emissions, the notification requirements of Sections 25.6.1 and 25.6.2 shall be satisfied if the source provides the required notification after excess emissions are first detected and includes in the notification an estimate of the time the excess emissions will continue. Excess emissions occurring after the estimated time period or changes in the nature of the emissions as originally reported shall require additional notification pursuant to Sections 25.6.1 and 25.6.2.]

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