

28-19-11. ~~Exceptions~~ Enforcement discretion due to ~~breakdowns~~ startup, shutdown, malfunctions, or scheduled maintenance. (a) ~~Abnormal operating conditions resulting~~ An emission source having emissions that are in excess of the applicable emission limitation and standard and result from malfunction breakdown startup, shutdown, malfunctions, and or necessary repairs to scheduled maintenance of control or processing equipment and appurtenances which cause emissions in excess of the limitations specified in the emission control regulations shall not be deemed violations provided that may be exempt from enforcement action at the secretary's discretion if both of the following conditions are met:

(1) The person responsible for the operation of the emission source notifies the department of the occurrence and nature of ~~such malfunctions, breakdown, or repairs~~ the excess emissions resulting from startup, shutdown, malfunctions, or scheduled maintenance, in writing, within ~~ten (10) days of noted occurrence~~ discovery of the excess emissions.

(2) ~~The number of occurrences of such breakdowns is not deemed excessive by the department and appropriate~~ Reasonable action is taken regarding the occurrence specified in paragraph (a)(1) to initiate and complete any necessary repairs and place the equipment back in operation as quickly as possible.

(b) Emissions that are in excess of the applicable emission source emission limitation and standard and result from startup, shutdown, or malfunctions shall be evaluated by the secretary for potential enforcement action based on the frequency and severity of the excess emissions.

(c) Emissions that are in excess of ~~the limitations specified in these emission control regulations resulting~~ the applicable emission source emission limitation and standard and result from scheduled maintenance of control or processing equipment and appurtenances ~~will~~ shall be

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permitted only on the basis of evaluated by the secretary for potential enforcement action based
on the following:

(1) The severity of the excess emissions;

(2) any prior approval for scheduled maintenance by the department secretary; and

(3) upon demonstration that such the scheduled maintenance cannot be accomplished by
maximum reasonable effort, including off-shift labor where required, during periods of shutdown
of any related control or processing equipment.

~~(c) Excessive contaminant emission from fuel burning equipment used for indirect
heating purposes resulting from fuel or load changes, start up, soot blowing, cleaning of fires,
and rapping of precipitators will not be deemed violations provided that they do not exceed a
period or periods aggregating more than five (5) minutes during any consecutive one (1) hour
period. *Provided, however,* That where the operator of such equipment can demonstrate to the
satisfaction of the department that any such specific operational procedures will require that the
allowable time period for excessive emissions be extended beyond five (5) minutes during any
one hour, the department may authorize, upon request of the operator, an adjusted time schedule
for permitting such excessive emissions. Such authorization shall require that visible emissions
not exceed an opacity of 60 percent; and shall specify an appropriate time and daily frequency
schedule for such excessive emissions~~

(d) Any exemption granted under this regulation may be rescinded if the secretary obtains
additional information and deems enforcement action necessary based upon this information.

(e) Lack of enforcement for excess emissions under this regulation shall not preclude the

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taking of enforcement action by USEPA or through private citizen lawsuits. (Authorized by
K.S.A. ~~1974~~ 2015 Supp. 65-3005; implementing K.S.A. 65-3006, and K.S.A. 65-3010; effective
Jan. 1, 1971; amended Jan. 1, 1972; amended, E-74-7, Jan. 1, 1974; amended May 1, 1975;
amended P- _____.)

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