

Excess Emissions

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Excess Emissions Reporting

EPA and states have a responsibility under the CAA to ensure that SIPs provide for attainment and maintenance of the NAAQs and protection of PSD increments.

- Nothing in the Clean Air Act (CAA) provides for automatic exemption of compliance during upset/malfunction conditions.
- In relation to meeting certain air quality standards, such as National Ambient Air Quality Standards (NAAQS), and Prevention of Significant Deterioration (PSD), the law is clear that State Implementation Plans (SIPs) shall ensure absolute compliance.

- On their face, many state excess emissions reporting rules could be read as failing to ensure compliance with the CAA by allowing an automatic exemption in relation to compliance with among other things, the NAAQs and PSD.

“OAC 252:100-9-3.3. **Demonstration of cause**

(a) **Malfunctions.** Excess emissions caused by malfunction are exempt from compliance with air emission limitations established in permits, rules, and orders of the DEQ if the owner or operator complies with the requirements of 252:100-9-3.1 and (c) of this Section...”

- In 1978, EPA adopted an excess emissions policy which considers all periods of excess emissions to be violations of the CAA.
- In subsequent EPA policy statements, CAA interpretations, guidance documents, and administrative rules and orders, EPA has consistently and clearly reaffirmed that position. (See references)

Malfunctions

Defined in 40 CFR §60.2 as “a sudden, infrequent, and not reasonably preventable failure of equipment to operate in a normal manner. Failures caused by poor maintenance or careless operations are not malfunctions.”

Startup and Shutdown

Startup and shutdown (S&S) periods are part of normal operations. Thus, excess emissions during S&S periods should be excused only if a malfunction occurred during the S&S period, or the source should demonstrate that the excess emissions during S&S could not have been prevented through careful planning and design.

- EPA has also stated that automatic exemptions will not be allowed.
- An affirmative defense may be permitted only with respect to penalties, not to injunctive relief, and only when no single source or small group of sources has the potential to cause an exceedance of NAAQs or PSD requirements and when there is no violation of federally promulgated performance standards or emission limitations.

- In cases where an affirmative defense may apply, a state director must exercise his or her enforcement discretion and cannot avoid that case-by-case obligation by allowing an automatic exemption.

- The policy of identifying all excess emissions as CAA violations and its disallowance of automatic exemptions is consistent with the CAA.
- SIPs protect ambient based standards.
 - Emissions above the allowable limits may cause or contribute to violations of the NAAQs and are therefore inexcusable.

- EPA has determined that if there are circumstances preventing sources from complying with the SIP during upset/malfunction, the state must address these problems in the underlying rules applicable to those sources and not through overarching excess emission provisions.

- Malfunctions typically result from equipment failure or improper maintenance and can result in excess emissions.
- MACT has its own SSM procedures often with different reporting requirements.

- Pursuant to Section 110(l), EPA may not approve a SIP revision if “the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of this chapter.”

Oklahoma's Program

- DEQ currently receives about 4800 written reports each year (about 100 per week), including about 1500 “Demonstrations of Cause”.
- DEQ enters all reports on-line.
- The most common problem the DEQ staff experiences is the lack of detail provided in the reports which results in the need for additional investigation.
- Each report is reviewed by DEQ staff.
- About 10 to 12 cases are referred to enforcement every 3 to 4 weeks.

New Rulemaking

- Oklahoma's Excess Emission rule is currently open for revisions.
- A workgroup has convened to review the current rule. The workgroup consists of AQD staff, AQ Council members and industry representatives.
- EPA has also been contacted for assistance.

New Rulemaking

- Issues being considered:
 - Reportable Quantities
 - NSPS/NESHAP Exemption
 - Reduction of Reporting
 - Affirmative Defenses
 - Permitting Excess Emissions



■ Why this is important:

- States must have adequate SIPs;
- Revised (tightened) NAAQS;
- Public awareness.

■ Problems for states:

- Excess emissions reporting issues;
- Resolution of violations and adequate compliance measures;
- Determining BACT for start-up, shutdown, malfunction.

References

- Mich. Dep't of Env'tl. Quality v. Browner, 230 F.3d 181, 183 (6th Cir. 2000) (citing 42 Fed. Reg. 21,472 (Apr. 27, 1977));
- See also Memorandum from Eric Shaffer, Dir., Office of Regulatory Enforcement, and John Seitz, Dir., Office of Air Quality Planning and Standards, to Regional Administrators Region I – X (Dec. 5, 2001);
- Memorandum from Steven A. Herman Assistant Administrator for Enforcement and Compliance Assurance, to Regional Administrators Region I- X (Sept. 20, 1999);

References

- Memorandum from Kathleen M. Bennett, Assistant Administrator for Air Noise and Radiation, Regional Administrators Regions I –X (September 28, 1982);
- Approval and Promulgation of State Implementation Plans; Michigan 63 Fed. Reg. 8573, 8575 (Feb. 20, 1998);
- Sierra Club v. Georgia Power Co. 443 F.3d 1346, (7th Cir. March 30, 2006).

References

- In re Prairie State Generating Company, PSD Appeal Number 05-05, at 113-118 (EAB, August 24, 2006);
- In re Tallmadge Generating Station, PSD Appeal Number 02-12, at 28 (EAB, May 21, 2003);
- In re Indeck-Niles Energy Center, PSD Appeal Number 04-01, at 15-18 (EAB, Sept. 30, 2004);
- In re Rockgen Energy Center, 8 E.A.D. 536 (EAB 1999).

Questions?

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