

**7007.1850 EMERGENCY PROVISION.**

A. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owners and operators of the stationary source, including an act of God, that requires immediate corrective action to restore normal operation, and that causes the stationary source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. Consistent with this definition of emergency, the agency may state in the permit what types of situations will not be considered emergencies if they occur.

B. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of item C are met.

C. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

(1) an emergency occurred and that the permittee can identify the cause or causes of the emergency;

(2) the permitted facility was at the time being properly operated;

(3) the permittee submitted notice of the emergency to the agency within two working days of when the emission limitations were exceeded due to the emergency. This notice must contain a detailed description of the emergency, any steps taken to mitigate emissions, and corrective actions taken; and

(4) during the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission limitations, standards, or regulations in the permit.

D. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

E. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

F. This provision does not limit the emergency power of the agency under Minnesota Statutes, section 116.11.

**Statutory Authority:** *MS s 116.07*

**History:** *18 SR 1059; 37 SR 991; 50 SR 365; 50 SR 369*

**NOTE:** The proposed repeal of this part at 49 SR 563 was vetoed by the governor at 50 SR 369.

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