

EXHIBIT A: MARKUP OF PROPOSED REGULATION 19.602

Reg. 19.602 Emergency Conditions

The following Reg. 19.602(A) shall remain in full force and effect until the effective date of the federal final rule published by EPA in the Federal Register approving the submission of the Plan which incorporates the following Reg. 19.602(B)-(C), at which time Reg. 19.602(A) shall cease to be effective and Reg. 19.602(B)-(C) shall become effective.

An “emergency” means any situation arising from the sudden and reasonably unforeseeable events beyond the control of the source ~~with an operating permit~~, including natural disasters, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the upset condition. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

(A) An emergency constitutes a complete affirmative defense to an action brought for noncompliance with such technology-based limitations if the following conditions are met. The affirmative defense of emergency shall demonstrate through properly signed contemporaneous operating logs, or such other relevant evidence that:

- (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (2) The permitted facility was at the time being properly operated;
- (3) During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and
- (4) The permittee submitted notice of the upset to the Department by the end of the next business day after the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

~~(B) — [RESERVED]~~

(B) In determining whether a period of excess emissions is avoidable and whether enforcement action is warranted for an exceedance of an emission limit established by the Plan or applicable permit, the Department, based upon information submitted by the owner or operator through properly signed contemporaneous operating logs, or such other relevant evidence, shall consider ~~whether~~ the following criteria, among other relevant factors are met:

- (1) Whether ~~A~~an emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (2) Whether ~~T~~the permitted facility was at the time being properly operated;

(3) Whether ~~D~~during the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

(4) Whether ~~T~~the permittee submitted notice of the upset to the Department by the end of the next business day after the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

An exceedance of an emission limit established by the Plan or applicable permit may not warrant enforcement action by the Department when the above criteria have been met in whole or in part.

(C) If any provision of “SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction” (80 FR 33840) is subsequently suspended by EPA or stayed by a federal court, then demonstration that conditions 19.602(A)(1-4) have been met will constitute a complete affirmative defense for emergency conditions until the completion of the reconsideration process or the resolution of the proceeding performing judicial review. This period shall begin and end on the date specified in the notices of stay published in the Federal Register for that section or subsection.

If “SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction (80 FR 33840) is withdrawn by EPA, vacated by a federal court, or otherwise nullified by federal legislation, then demonstration that conditions 19.602(A)(1-4) have been met will constitute a complete affirmative defense for emergency conditions following the date specified in the notice of vacatur or withdrawal published in the Federal Register.

EXHIBIT B: MARKUP OF PROPOSED REGULATION 19.1004(H)

19.1004 General Provisions

(H) Malfunctions, Breakdowns, Upsets

(1) In determining whether enforcement action is warranted for Emissions-emissions in excess of these Regulations which are temporary and result solely from a sudden and unavoidable breakdown, malfunction or upset of process or emission control equipment, or sudden and unavoidable upset of operation, as per referenced in Reg. 19.601 and Reg. 19.602, the Department, based on information submitted by the owner or operator, shall consider whether the following criteria are met-will not be considered a violation of these Regulations provided:

- (a) the owner or operator notifies the Department of any such occurrence by the end of the next business day of the occurrence; and
- (b) the owner or operator demonstrates to the Director that the suggested period of time for correction is as expeditious as practicable; and
- (c) the breakdown or upset is determined by the Director to be unavoidable and not the result of negligence; and
- (d) within five (5) days after the beginning of the occurrence, a written report is submitted to the Director which includes the cause and nature of the event, estimated quantity of volatile organic compounds emitted, time of emission and to prevent recurrence; and
- (e) the Director is immediately notified when corrective measures have been accomplished.

Emissions in excess of these Regulations which are temporary and result solely from a sudden and unavoidable breakdown, malfunction or upset of process or emission control equipment, or sudden and unavoidable upset of operation, may not warrant enforcement action by the Department when the above criteria have been met in whole or in part.

(2) [RESERVED]

(3) If any provision of “SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction” (80 FR 33840) is subsequently suspended by EPA or stayed by a federal court, then demonstration that conditions 19.602(A)(1-4) have been met will constitute a complete affirmative defense for emergency conditions until the completion of the reconsideration process or the resolution of the proceeding performing judicial

review. This period shall begin and end on the date specified in the notices of stay published in the Federal Register for that section or subsection.

If “SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction (80 FR 33840) is withdrawn by EPA, vacated by a federal court, or otherwise nullified by federal legislation, then demonstration that conditions 19.602(A)(1-4) have been met will constitute a complete affirmative defense for emergency conditions following the date specified in the notice of vacatur or withdrawal published in the Federal Register.