

**Title 129 - Department of Environmental Quality**  
**Chapter 35**

Effective Date 12/15/98 (Rev. Date 9/7/97)

Chapter 35 - COMPLIANCE; EXCEPTIONS DUE TO STARTUP, SHUTDOWN, OR  
MALFUNCTION

001 Upon receipt of a notice of excess emissions issued by the Department the source to which the notice is issued may provide information showing that the excess emissions were the result of a malfunction, start-up, or shutdown. Based upon any information submitted by the source operator, and any other pertinent information available, the Director shall make a determination whether the excess emissions constitute a malfunction, start-up, or shutdown, and whether the nature, extent and duration of the excess emissions warrant enforcement action. In determining whether enforcement action is warranted, the Director shall consider the following:

001.01 Whether the excess emissions during start-up, shutdown or malfunction, occurred as a result of safety, technological or operating constraints of the control equipment, process equipment, or process.

001.02 Whether the air pollution control equipment, process equipment, or processes were maintained and operated to the maximum extent practical for minimizing emissions.

001.03 Whether repairs were made as expeditiously as practicable when the operator knew or should have known when excess emissions were occurring.

001.04 Whether the amount and duration of the excess emissions were limited to the maximum extent practical during periods of such emissions.

001.05 Whether all practical steps were taken to limit the impact of the excess emissions on the ambient air quality.

002 The information provided by the source operator under 001 shall include, at a minimum, the following:

002.01 Name and location of installation.

002.02 Name and telephone number of the person responsible for the installation.

002.03 The identity of the equipment causing the excess emissions.

002.04 The time and duration of the period of excess emissions.

002.05 The cause of the excess emissions.

002.06 The type of air contaminant involved.

002.07 A best estimate of the magnitude of the excess emissions expressed in the units of the applicable emission control regulation and the operating data and calculations used in estimating the magnitude.

002.08 The measures taken to mitigate the extent and duration of the excess emissions.

002.09 The measures taken to remedy the situation which caused the

excess emissions and the measures taken or planned to prevent the recurrence of such situations.

003 The information specified in 002 shall be submitted to the Director not later than 15 days after receipt of the notice of excess emissions.

004 Planned Start-Up and Shutdown Reporting.

The owner or operator of an installation subject to this chapter shall notify the Director, in writing, whenever a planned start-up or shutdown may result in excess emissions. This notice shall be mailed no later than 10 days prior to such action, and shall include, but not be limited to, the following information:

004.01 Name and location of the installation.

004.02 Name and telephone number of the person responsible for the installation.

004.03 The identity of the equipment which may cause excess emissions.

004.04 Reasons for proposed shutdown or start-up.

004.05 Duration of anticipated period of excess emissions.

004.06 Date and time of proposed shutdown or start-up.

004.07 Physical and chemical composition of pollutants whose emissions are affected by the action.

004.08 Methods, operating data, and/or calculations used to determine these emissions.

004.09 Quantification of emissions during such action in the units of the applicable emission control regulation.

004.10 All measures planned to minimize the extent and duration of excess emissions during the shutdown and ensuing start-up.

005 Malfunction and Unplanned Shutdown Reporting.

The owner or operator of an installation subject to this chapter shall notify the director, in writing, whenever emissions due to malfunctions, unplanned shutdowns or ensuing start-ups are, or may be, in excess of applicable emission control regulations. Such notification shall be mailed within 48 hours of the beginning of each period of excess emissions, and shall include, but not be limited to, the information required by 004. This notice is not required provided the following conditions are met:

005.01 A certified continuous emissions monitor is in operation throughout the duration of the period of malfunction, shutdown or ensuing start-up; and

005.02 The period of malfunction, shutdown or ensuing start-up is less than 1 hour in duration.

006 The Director shall make a determination of whether or not excess emissions were due to start-up, shutdown, or malfunction, and what, if any, enforcement action should be taken.

The Director will consider the following in making his determination:

006.01 All notification requirements of the chapter have been met.

006.02 The malfunction, shutdown, or start-up did not result entirely or in part from poor maintenance, careless operation, or any other preventable upset conditions or equipment breakdowns.

006.03 All reasonable steps were taken to correct the conditions causing the excess emissions, as expeditiously as practicable, including the use of off-shift labor and overtime if necessary.

006.04 All reasonable steps were taken to minimize the emissions and their effect on air quality.

006.05 The malfunction or shutdown is not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

006.06 The excess emissions are not a threat to public health or ambient air quality.

007 If the Director determines that the reporting requirements of 002 and/or 004 are inappropriate to a particular installation, he may establish other reporting requirements which are sufficient to allow the determinations described in 006.

008 Nothing in this regulation shall be construed to limit the authority of the Director to take appropriate action to enforce the provisions of the Nebraska Environmental Protection Act, and the regulations promulgated thereunder.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(1)(2)(11); 81-1505(12)(16)

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