

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR QUALITY DIVISION

PART 9. EMISSION LIMITATIONS AND PROHIBITIONS—MISCELLANEOUS

R 336.1915 Enforcement discretion in instances of excess emissions resulting from malfunction, start-up, or shutdown.

Rule 915. (1) In determining whether the department will pursue enforcement against a person, the department shall consider evidence that the emission violations resulted from a malfunction, start-up, or shutdown.

(2) If the department determines that the emission violations resulted from a malfunction, start-up, or shutdown, then the department may use enforcement discretion when resolving the emission violations based upon subrules (3) and (4) of this rule, as applicable.

(3) A person may submit evidence to the department for its consideration in determining that the emission violations resulted from a malfunction. The evidence shall demonstrate all of the following, as applicable:

(a) The excess emissions were a result of a sudden and unavoidable breakdown of process or control equipment, beyond the reasonable control of the person.

(b) The air pollution control equipment, process equipment, and processes were maintained and operated in a manner consistent with good practice for minimizing emissions, to the maximum extent practicable.

(c) The excess emissions caused by a bypass (an intentional diversion of control equipment) were unavoidable to prevent loss of life, personal injury, or severe property damage.

(d) Repairs were made in an expeditious fashion when the person knew or should have known that applicable emission limitations were being exceeded. To the extent practicable, off-shift labor and overtime shall have been utilized to ensure that the repairs were made expeditiously.

(e) The amount and duration of excess emissions, including any bypass, were minimized to the maximum extent practicable during periods of the emissions.

(f) All reasonably possible steps were taken to minimize the impact of the excess emissions on ambient air quality.

(g) The excess emissions resulting from the malfunction were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(h) The malfunction was an infrequent event and was not reasonably preventable.

(i) All emission monitoring systems were kept in operation if at all possible.

(j) The person responsible for operating the source of air contaminants has a malfunction abatement plan, consistent with the requirements set forth in R 336.1911(2) and with both of the following provisions:

(i) Any malfunction abatement plan developed in accordance with R 336.1911(2) shall be maintained onsite and available for inspection, upon request, by the department for the life of the emission unit or units. The department may require that the person responsible for the malfunction abatement plan make revisions to the plan. The person shall revise the malfunction abatement plan within 45 days after a request by the department. The revised malfunction abatement plan shall be developed in accordance with R 336.1911(2).

(ii) If the malfunction abatement plan fails to address or inadequately addresses an event that meets the characteristics of a malfunction at the time the plan is initially developed, then the person shall revise the malfunction abatement plan within 45 days after the event occurs. The revised malfunction abatement plan shall be developed in accordance with R 336.1911(2).

(k) The excess emissions presenting an imminent threat to human health, safety, or the environment were reported to the department as soon as possible. Unless otherwise specified in the facility's permit, other excess emissions were reported as provided in R 336.1912. If requested by the department, a person shall submit a full written report that includes the known causes, the corrective actions taken, and the preventive measures to be taken to minimize or eliminate the chance of recurrence.

(l) The actions during the period of excess emissions were documented by contemporaneous operating logs or other relevant evidence as provided by R 336.1912.

(m) Any information submitted to the department under this subrule shall be properly certified in accordance with the provisions of R 336.1912.

(4) A person may submit evidence to the department for its consideration in determining that the emission violations resulted from a start-up or shutdown. The evidence shall be based upon subrules (3)(b), (c), (e), (f), (i), (k), (l), and (m) of this rule; subdivisions (a), (b), (c) of this subrule; and R 336.1912, as applicable.

(a) The periods of excess emissions that occurred during start-up or shutdown were short and infrequent and could not have been prevented through careful planning and design.

(b) The excess emissions that occurred during start-up or shutdown were not part of a recurring pattern indicative of inadequate design, operation, or maintenance.

(c) The person responsible for operating the source of air contaminants has a preventative maintenance plan, consistent with the requirements set forth in R 336.1911(2)(a).

(5) For an emission unit or units subject to standards and limitations promulgated pursuant to section 111 or 112 of the clean air act, the start-up, shutdown, or malfunction provisions of the applicable requirements within section 111 or 112 shall apply.

(6) Nothing in this rule shall be construed to limit the authority of the department to seek injunctive relief or to enforce the provisions of the act and the regulations promulgated under the act.

History: 2002 MR 10, Eff. May 28, 2002.