

Section 5. Unavoidable equipment malfunction.

*(a) Unavoidable Equipment Malfunction.*

(i) Any source believing that any emissions in excess of established regulation limits or standards resulted from an unavoidable equipment malfunction shall notify the Division within 24 hours of the incident via telephone, electronic mail, fax, or other similar method. A detailed description of the circumstances of the incident as described in paragraph 5(a)(i)(A) of this section, including a corrective program directed at preventing future such incidents, must be submitted within 14 days of the onset of the incident.

(A) In the incident report noted above, the source shall include any relevant evidence, including, but not necessarily limited to, evidence that (1) there was an equipment malfunction beyond the reasonable control of the owner or operator; (2) the excess emissions could not have been avoided by better operation, maintenance or improved design of the malfunctioning component; (3) to the maximum extent practicable, the source maintained and operated the air pollution control equipment and process equipment, in a manner consistent with good practice for minimizing emissions, including minimizing any bypass emissions; (4) any necessary repairs were made as quickly as practicable, using off-shift labor and overtime as needed and possible; (5) all practicable steps were taken to minimize the potential impact of the excess emissions on ambient air quality; and (6) the excess emissions are not part of a recurring pattern that may have been caused by inadequate operation or maintenance, or inadequate design of the malfunctioning component.

(ii) The burden of proof is on the owner or operator of the source to provide sufficient information to demonstrate that an unavoidable equipment malfunction occurred.

*(b) Enforcement Discretion.*

(i) The Division may elect not to pursue enforcement after considering whether excess emissions resulted from an unavoidable equipment malfunction. The Division will evaluate, on a case-by-case basis, the information submitted pursuant to paragraph (a)(i)(A) of this section to determine whether to pursue enforcement action. The Administrator may extend the 14-day time period for the submission of the incident report for cause.