

**WAC 173-400-109 Unavoidable excess emissions.** (State-only requirement not federally enforceable.) This section takes effect on the effective date of EPA's removal of the September 20, 1993, version of WAC 173-400-107 from the SIP.

(1) Excess emissions determined to be unavoidable under the procedures and criteria in this section are violations of the applicable statute, rule, permit, or regulatory order.

(a) The permitting authority determines whether excess emissions are unavoidable based on the information supplied by the source and the criteria in subsection (5) of this section.

(b) Excess emissions determined by the permitting authority to be unavoidable are:

(i) A violation subject to WAC 173-400-230 (3), (4), and (6); but

(ii) Not subject to civil penalty under WAC 173-400-230(2).

Note: Nothing in a state rule limits a federal court's jurisdiction or discretion to determine the appropriate remedy in an enforcement action.

(2) The owner or operator of a source shall have the burden of proving to the permitting authority in an enforcement action that excess emissions were unavoidable. This demonstration shall be a condition to obtaining relief under subsection (5) of this section.

(3) This section does not apply to an exceedance of an emission standard in 40 C.F.R. Parts 60, 61, 62, 63, and 72, or a permitting authority's adoption by reference of these federal standards.

(4) Excess emissions that occur due to an upset or malfunction during a startup or shutdown event are treated as an upset or malfunction under subsection (5) of this section.

(5) Excess emissions due to an upset or malfunction will be considered unavoidable provided the source reports as required by WAC 173-400-108 and adequately demonstrates to the permitting authority that:

(a) The event was not caused by poor or inadequate design, operation, maintenance, or any other reasonably preventable condition;

(b) The event was not of a recurring pattern indicative of inadequate design, operation, or maintenance;

(c) When the operator knew or should have known that an emission standard or other permit condition was being exceeded, the operator took immediate and appropriate corrective action in a manner consistent with safety and good air pollution control practice for minimizing emissions during the event, taking into account the total emissions impact of the corrective action. Actions taken could include slowing or shutting down the emission unit as necessary to minimize emissions;

(d) If the emitting equipment could not be shutdown during the malfunction or upset to prevent the loss of life, prevent personal injury or severe property damage, or to minimize overall emissions, repairs were made in an expeditious fashion;

(e) All emission monitoring systems and pollution control systems were kept operating to the extent possible unless their shutdown was necessary to prevent loss of life, personal injury, or severe property damage;

(f) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent possible; and

(g) All practicable steps were taken to minimize the impact of the excess emissions on ambient air quality.

[Statutory Authority: Chapter 70.94 RCW. WSR 18-17-111 (Order 15-07), § 173-400-109, filed 8/16/18, effective 9/16/18; WSR 11-06-060 (Order 09-01), § 173-400-109, filed 3/1/11, effective 4/1/11.]