

## Environmental Protection Agency

## § 49.122

process or air pollution control equipment;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were immediately taken to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

[75 FR 10179, Mar. 5, 2010]

§§ 49.25–49.50 [Reserved]

### Subpart B—General Provisions

§§ 49.51–49.100 [Reserved]

### Subpart C—General Federal Implementation Plan Provisions

SOURCE: 70 FR 18095, Apr. 8, 2005, unless otherwise noted.

§§ 49.101–49.120 [Reserved]

GENERAL RULES FOR APPLICATION TO INDIAN RESERVATIONS IN EPA REGION 10

#### § 49.121 Introduction.

(a) *What is the purpose of the “General Rules for Application to Indian Reservations in EPA Region 10”?* These “General Rules for Application to Indian Reservations in EPA Region 10” establish emission limitations and other requirements for air pollution sources located within Indian reservations in Idaho, Oregon, and Washington that are appropriate in order to ensure a basic level of air pollution control and to protect public health and welfare.

(b) *How were these “General Rules for Application to Indian Reservations in EPA Region 10” developed?* These “General Rules for Application to Indian Reservations in EPA Region 10” were developed in consultation with the Indian Tribes located in Idaho, Oregon, and Washington and with input from the public and State and local governments in Region 10. These general rules take into consideration the current air quality situations within Indian reservations, the known sources of air pollution, the needs and concerns of the Indian Tribes in that portion of Region 10, and the air quality rules in adjacent jurisdictions.

(c) *When are these “General Rules for Application to Indian Reservations in EPA Region 10” applicable to sources on a particular Indian reservation?* These “General Rules for Application to Indian Reservations in EPA Region 10” apply to air pollution sources on a particular Indian reservation when EPA has specifically promulgated one or more rules for that reservation. Rules will be promulgated through notice and comment rulemaking and will be specifically identified in the implementation plan for that reservation in Subpart M—Implementation Plans for Tribes—Region 10, of this part. These “General Rules for Application to Indian Reservations in EPA Region 10” apply only to air pollution sources located within the exterior boundaries of an Indian reservation or other reservation lands specified in subpart M of this part.

#### § 49.122 Partial delegation of administrative authority to a Tribe.

(a) *What is the purpose of this section?* The purpose of this section is to establish the process by which the Regional Administrator may delegate to an Indian Tribe partial authority to administer one or more of the Federal requirements in effect in subpart M of this part for a particular Indian reservation. The Federal requirements administered by the delegated Tribe will be subject to enforcement by EPA under Federal law. This section provides for administrative delegation and does not affect the eligibility criteria under § 49.6 for treatment in the same manner as a State.

(b) *How does a Tribe request partial delegation of administrative authority?* In order to be delegated authority to administer one or more of the Federal requirements that are in effect in subpart M of this part for a particular Indian reservation, the Tribe must submit a request to the Regional Administrator that:

(1) Identifies the specific provisions for which delegation is requested;

(2) Identifies the Indian reservation for which delegation is requested;

(3) Includes a statement by the applicant's legal counsel (or equivalent official) that includes the following information:

(i) A statement that the applicant is an Indian Tribe recognized by the Secretary of the Interior;

(ii) A descriptive statement demonstrating that the applicant is currently carrying out substantial governmental duties and powers over a defined area and that it meets the requirements of § 49.7(a)(2); and

(iii) A description of the laws of the Indian Tribe that provide adequate authority to carry out the aspects of the provisions for which delegation is requested; and

(4) Demonstrates that the Tribe has, or will have, the technical capability and adequate resources to carry out the aspects of the provisions for which delegation is requested.

(c) *How is the partial delegation of administrative authority accomplished?* (1) A Partial Delegation of Administrative Authority Agreement will set forth the terms and conditions of the delegation, will specify the provisions that the Tribe will be authorized to administer on behalf of EPA, and will be entered into by the Regional Administrator and the Tribe. The Agreement will become effective upon the date that both the Regional Administrator and the Tribe have signed the Agreement. Once the delegation becomes effective, the Tribe will have the authority under the Clean Air Act, to the extent specified in the Agreement, for administering one or more of the Federal requirements that are in effect in subpart M of this part for the particular Indian reservation and will act on behalf of the Regional Administrator.

(2) A Partial Delegation of Administrative Authority Agreement may be modified, amended, or revoked, in part or in whole, by the Regional Administrator after consultation with the Tribe. Any substantive modifications or amendments will be subject to the procedures in paragraph (d) of this section.

(d) *How will any partial delegation of administrative authority be publicized?* (1) Prior to making any final decision to delegate partial administrative authority to a Tribe under this section, EPA will consult with appropriate governmental entities outside of the specified reservation and city and county governments located within the boundaries of the specified reservation.

(2) The Regional Administrator will publish a notice in the FEDERAL REGISTER informing the public of any Partial Delegation of Administrative Authority Agreement for a particular Indian reservation and will note such delegation in the implementation plan for the Indian reservation. The Regional Administrator will also publish an announcement of the partial delegation agreement in local newspapers.

**§ 49.123 General provisions.**

(a) *Definitions.* The following definitions apply for the purposes of the "General Rules for Application to Indian Reservations in EPA Region 10." Terms not defined herein have the meaning given to them in the Act.

*Act* means the Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*).

*Actual emissions* means the actual rate of emissions, in tons per year, of an air pollutant emitted from an air pollution source. For an existing air pollution source, the actual emissions are the actual rate of emissions for the preceding calendar year and must be calculated using the actual operating hours, production rates, in-place control equipment, and types of materials processed, stored, or combusted during the preceding calendar year. For a new air pollution source that did not operate during the preceding calendar year, the actual emissions are the estimated actual rate of emissions for the current calendar year.