

## Environmental Protection Agency

## § 63.1551

with the sinter building in-draft requirement under § 63.1543(d) by employing the method allowed in § 63.1547(i)(1), the reports must contain an identification of the periods when there was not a positive in-draft, and an explanation of the corrective actions taken.

(5) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(d) by employing the method allowed in § 63.1547(i)(2), the reports must contain an identification of the periods when the 15-minute volumetric flow rate(s) dropped below the minimum established during the most recent in-draft determination, and an explanation of the corrective actions taken.

(6) If an owner or operator chooses to demonstrate continuous compliance with the sinter building in-draft requirement under § 63.1543(d) by employing the method allowed in § 63.1547(i)(2), and volumetric flow rate is monitored at the baghouse inlet, the reports must contain an identification of the days that the damper positions were not in the positions established during the most recent in-draft determination, and an explanation of the corrective actions taken.

(7) The reports must contain a summary of the records maintained as part of the practices described in the standard operating procedures manual for baghouses required under § 63.1547(a), including an explanation of the periods when the procedures were not followed and the corrective actions taken.

(8) The reports shall contain a summary of the fugitive dust control measures performed during the required reporting period, including an explanation of any periods when the procedures outlined in the standard operating procedures manual required by § 63.1544(a) were not followed and the corrective actions taken. The reports shall not contain copies of the daily records required to demonstrate compliance with the requirements of the standard operating procedures manuals required under §§ 63.1544(a) and 63.1547(a).

(9) If there was a malfunction during the reporting period, the report shall also include the number, duration, and a brief description for each type of

malfunction which occurred during the reporting period and which caused or may have caused any applicable emission limitation to be exceeded. The report must also include a description of actions taken by an owner or operator during a malfunction of an affected source to minimize emissions in accordance with §§ 63.1543(i) and 63.1544(d), including actions taken to correct a malfunction.

[76 FR 70857, Nov. 15, 2011]

### § 63.1550 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(l) of the act, the authorities contained in paragraph (b) of this section must be retained by the Administrator and not transferred to a State.

(b) Authorities which will not be delegated to States: No restrictions.

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### § 63.1551 Affirmative defense for exceedance of emission limit during malfunction.

In response to an action to enforce the standards set forth in this subpart you may assert an affirmative defense to a claim for civil penalties for exceedances of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) *Affirmative defense.* To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The excess emissions:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and

(ii) Could not have been prevented through careful planning, proper design

or better operation and maintenance practices; and

(iii) Did not stem from any activity or event that could have been foreseen and avoided, or planned for; and

(iv) Were not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when the applicable emission limitations were being exceeded. Off-shift and overtime labor were used, to the extent practicable to make these repairs; and

(3) The frequency, amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions; and

(4) If the excess emissions resulted from a bypass of control equipment or a process, then the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage; and

(5) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality, the environment and human health; and

(6) All emissions monitoring and control systems were kept in operation if at all possible, consistent with safety and good air pollution control practices; and

(7) All of the actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the facility was operated in a manner consistent with good practices for minimizing emissions; and

(9) A written root cause analysis has been prepared, the purpose of which is

to determine, correct, and eliminate the primary causes of the malfunction and the excess emissions resulting from the malfunction event at issue. The analysis shall also specify, using best monitoring methods and engineering judgment, the amount of excess emissions that were the result of the malfunction.

(b) *Notification.* The owner or operator of the facility experiencing an exceedance of its emission limit(s) during a malfunction shall notify the Administrator by telephone or facsimile (FAX) transmission as soon as possible, but no later than two business days after the initial occurrence of the malfunction, if it wishes to avail itself of an affirmative defense to civil penalties for that malfunction. The owner or operator seeking to assert an affirmative defense shall also submit a written report to the Administrator within 45 days of the initial occurrence of the exceedance of the standards in this subpart to demonstrate, with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. The owner or operator may seek an extension of this deadline for up to 30 additional days by submitting a written request to the Administrator before the expiration of the 45 day period. Until a request for an extension has been approved by the Administrator, the owner or operator is subject to the requirement to submit such report within 45 days of the initial occurrence of the exceedance.

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TABLE 1 TO SUBPART TTT OF PART 63—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

TABLE 1 OF SUBPART TTT—GENERAL PROVISIONS APPLICABILITY TO SUBPART TTT

Reference	Applies to subpart TTT	Comment
63.6(a), (b), (c) .....	Yes.	
63.6(d) .....	No .....	Section reserved.
63.6(e)(1)(i) .....	No .....	See 63.1543(i) and 63.1544(d) for general duty requirement.
63.6(e)(1)(ii) .....	No.	
63.6(e)(1)(iii) .....	Yes.	
63.6(e)(2) .....	No .....	Section reserved.
63.6(e)(3) .....	No.	
63.6(f)(1) .....	No.	
63.6(g) .....	Yes.	