

Environmental Protection Agency

§49.9861

test had been performed, for the purpose of submitting compliance certifications.

(h) *Equipment operations.* The owner or operator shall operate all equipment or systems needed to comply with this section in accordance with 40 CFR 60.11(d) and consistent with good engineering practices to keep emissions at or below the emissions limitations in this section, and following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(i) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not a person has violated or is in violation of any standard in the plan.

(2) During periods of start-up and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equip-

ment and did not result from inadequate design or construction of the 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. Redesignated at 76 FR 23879, Apr. 29, 2011]

§§ 49.5514–49.9860 [Reserved]

Subpart M—Implementation Plans for Tribes—Region X

SOURCE: 65 FR 51433, Aug. 23, 2000, unless otherwise noted.

IMPLEMENTATION PLAN FOR THE BURNS PAIUTE TRIBE OF THE BURNS PAIUTE INDIAN COLONY OF OREGON

SOURCE: 70 FR 18110, Apr. 8, 2005, unless otherwise noted.

§ 49.9861 Identification of plan.

This section and §§49.9862 through 49.9890 contain the implementation plan for the Burns Paiute Tribe of the Burns Paiute Indian Colony. This plan consists of a combination of Tribal rules and measures and Federal regulations and measures which apply within the Reservation of the Burns Paiute Indian Colony.