

## Environmental Protection Agency

## § 63.1344

$Q_{ab}$  = The exhaust flow of the alkali bypass (dscf/ton feed).

$Q_{cm}$  = The exhaust flow of the coal mill (dscf/ton feed).

7000 = The conversion factor for grains (gr) per lb.

For new kilns that combine kiln exhaust and clinker cooler gas the limit is calculated using the Equation 2 of this section:

$$PM_{alt} = (0.0020 \times 1.65) (Q_k + Q_c + Q_{ab} + Q_{cm}) / (7000) \quad (\text{Eq. 2})$$

Where:

$PM_{alt}$  = Alternative PM emission limit for commingled sources.

0.002 = The PM exhaust concentration (gr/dscf) equivalent to 0.020 lb per ton clinker where clinker cooler and kiln exhaust gas are not combined.

1.65 = The conversion factor of ton feed per ton clinker.

$Q_k$  = The exhaust flow of the kiln (dscf/ton feed).

$Q_c$  = The exhaust flow of the clinker cooler (dscf/ton feed).

$Q_{ab}$  = The exhaust flow of the alkali bypass (dscf/ton feed).

$Q_{cm}$  = The exhaust flow of the coal mill (dscf/ton feed).

7000 = The conversion factor for gr per lb.

(c) *Open clinker storage pile.* The owner or operator of an open clinker storage pile must prepare, and operate in accordance with, the fugitive dust emissions control measures, described in their operation and maintenance plan (see § 63.1347 of this subpart), that is appropriate for the site conditions as specified in paragraphs (c)(1) through (3) of this section. The operation and maintenance plan must also describe the measures that will be used to minimize fugitive dust emissions from piles of clinker, such as accidental spillage, that are not part of open clinker storage piles.

(1) The operation and maintenance plan must identify and describe the location of each current or future open clinker storage pile and the fugitive dust emissions control measures the owner or operator will use to minimize fugitive dust emissions from each open clinker storage pile.

(2) For open clinker storage piles, the operations and maintenance plan must specify that one or more of the following control measures will be used to minimize to the greatest extent practicable fugitive dust from open clinker storage piles: Locating the source inside a partial enclosure, installing and

operating a water spray or fogging system, applying appropriate chemical dust suppression agents, use of a wind barrier, compaction, use of tarpaulin or other equally effective cover or use of a vegetative cover. You must select, for inclusion in the operations and maintenance plan, the fugitive dust control measure or measures listed in this paragraph that are most appropriate for site conditions. The plan must also explain how the measure or measures selected are applicable and appropriate for site conditions. In addition, the plan must be revised as needed to reflect any changing conditions at the source.

(3) Temporary piles of clinker that result from accidental spillage or clinker storage cleaning operations must be cleaned up within 3 days.

(d) Emission limits in effect prior to September 9, 2010. Any source defined as an existing source in § 63.1351, and that was subject to a PM, mercury, THC, D/F, or opacity emissions limit prior to September 9, 2010, must continue to meet the limits shown in Table 2 to this section until September 9, 2015.

[78 FR 10037, Feb. 12, 2013]

### § 63.1344 Affirmative defense for violation of emission standards during malfunction.

In response to an action to enforce the standards set forth in § 63.1343(b) and (c) and § 63.1345 and you may assert an affirmative defense to a claim for civil penalties for violations of such standards that are caused by malfunction, as defined at 40 CFR 63.2. Appropriate penalties may be assessed 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) *Assertion of affirmative defense.* To establish the affirmative defense in any action to enforce such a standard, you must timely meet the reporting requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that:

(1) The violation:

(i) Was caused by a sudden, infrequent, and unavoidable failure of air pollution control 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) Was not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(2) Repairs were made as expeditiously as possible when a violation occurred; and

(3) The frequency, amount, and duration of the violation (including any bypass) were minimized to the maximum extent practicable; and

(4) If the violation 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 violation 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 violation were documented by properly signed, contemporaneous operating logs; and

(8) At all times, the affected source 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 violation resulting from the malfunction event at issue. The analysis shall also specify, using best moni-

toring methods and engineering judgment, the amount of any emissions that were the result of the malfunction.

(b) *Report.* The owner or operator seeking to assert an affirmative defense shall submit a written report to the Administrator with all necessary supporting documentation, that it has met the requirements set forth in paragraph (a) of this section. This affirmative defense report shall be included in the first periodic compliance, deviation report or excess emission report otherwise required after the initial occurrence of the violation of the relevant standard (which may be the end of any applicable averaging period). If such compliance, deviation report or excess emission report is due less than 45 days after the initial occurrence of the violation, the affirmative defense report may be included in the second compliance, deviation report or excess emission report due after the initial occurrence of the violation of the relevant standard.

[78 FR 10039, Feb. 12, 2013]

**§ 63.1345 Emissions limits for affected sources other than kilns; clinker coolers; new and reconstructed raw material dryers.**

The owner or operator of each new or existing raw material, clinker, or finished product storage bin; conveying system transfer point; bagging system; bulk loading or unloading system; raw and finish mills; and each existing raw material dryer, at a facility which is a major source subject to the provisions of this subpart must not cause to be discharged any gases from these affected sources which exhibit opacity in excess of 10 percent.

[78 FR 10039, Feb. 12, 2013]

**§ 63.1346 Operating limits for kilns.**

(a) The owner or operator of a kiln subject to a D/F emissions limitation under § 63.1343 must operate the kiln such that the temperature of the gas at the inlet to the kiln PM control device (PMCD) and alkali bypass PMCD, if applicable, does not exceed the applicable temperature limit specified in paragraph (b) of this section. The owner or operator of an in-line kiln/raw mill