

Title 129 - Department of Environmental Quality
Chapter 11

Effective Date 12/15/98 (Rev. 12/15/93)

Chapter 11 - OPERATING PERMITS - EMERGENCY; DEFENSE

001 For the purposes of a Class I or Class II operating permit, an "emergency" means any situation arising from sudden, unavoidable, and reasonably unforeseeable events beyond the control of the source, including acts of God, which requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

002 An emergency constitutes an affirmative defense to an action brought for noncompliance with technology-based emission limitations if the conditions of 003 below are met.

003 The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:

003.01 An emergency occurred and that the permittee can identify the cause(s) of the emergency;

003.02 The permitted facility was at the time being properly operated;

003.03 During the period of the emergency, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standards, or other requirements in the permit; and

003.04 The permittee submitted notice of the emergency to the Department within two working days of the time when emission limitations were exceeded due to the emergency. This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

004 In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

005 This provision is in addition to any emergency or upset provision contained in any applicable requirement.

Enabling Legislation: Neb. Rev. Stat. §§81-1504(1)(2); 81-1505(12)(16)

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For more information, contact
MoreInfo@NDEQ.state.NE.US

Nebraska Department of Environmental Quality

**1200 "N" Street, Suite 400
PO Box 98922
Lincoln, NE 68509
(402)471-2186 fax: (402)471-2909**