

REGULATION XI. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPS)

SUBPART A - General Provisions (Delegation Effect.: 11-8-76: Rev. Effect.: 1-13-87)

RULE 361.01. APPLICABILITY

The provisions of this regulation apply to the owner or operator of any stationary source for which a standard is prescribed under this regulation, and for which Federal delegation of the implementation and enforcement of the standards to the Air Pollution Control District of San Diego County has been accomplished. Any such stationary source must also comply with other regulations of the Air Pollution Control District of San Diego County, as well as concurrent enforcement authority of these standards pursuant to Section 113 of the Act, as amended, if the EPA Administrator desires to exercise it.

RULE 361.02. DEFINITIONS

Terms used in this regulation shall have the following meanings or, for terms not herein defined, the meaning given them in Regulation I of the Air Pollution Control District of San Diego County or in the Act:

- (a) "**Act**" means the Clean Air Act (42 U.S.C. 7401 et seq.).
- (b) "**Administrator**" means the Administrator of the Environmental Protection Agency or his authorized representative.
- (c) "**Alternative Method**" means any method of sampling and analyzing for an air pollutant which is not a reference method but which has been demonstrated to the Administrator's satisfaction to produce results adequate for the Administrator's determination of compliance.
- (d) "**Capital Expenditure**" means an expenditure for a physical or operational change to a stationary source which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the latest edition of Internal Revenue Service (IRS) Publication 534 and the stationary source's basis, as defined by Section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to a stationary source must be reduced by an "excluded additions" as defined for stationary sources constructed after December 31, 1981, in IRS Publication 534, as would be done for tax purposes. In addition, "annual asset guideline repair allowance" may be used even though it is excluded for tax purposes in IRS Publication 534.
- (e) "**Commenced**" means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(f) "**Compliance Schedule**" means the date or dates by which a source or category of sources is required to comply with the standards of this regulation and with any steps toward such compliance which are set forth in a waiver of compliance granted by the Administrator.

(g) "**Construction**" means fabrication, erection, or installation of a stationary source.

(h) "**Effective Date**" is the date of Federal delegation of the implementation and enforcement of any standard promulgated in this regulation to the State of California, on behalf of the Air Pollution Control District of San Diego County.

(i) "**Existing Source**" means any stationary source which is not a new source.

(j) "**Monitoring System**" means any system, required under the monitoring Sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide a record of emissions or process parameters.

(k) "**New Source**" means any stationary source, the construction or modification of which is commenced after the publication in the FEDERAL REGISTER of proposed national emission standards for hazardous air pollutants which will be applicable to such source.

(l) "**Owner or Operator**" means any person who owns, leases, operates, controls, or supervises a stationary source.

(m) "**Reference Method**" means any method of sampling and analyzing for an air pollutant, as described in Appendix B to 40 CFR Part 61.

(n) "**Run**" means the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice.

(o) "**Startup**" means the setting in operation of a stationary source for any purpose.

(p) "**Standard**" means a national emission standard including a design, equipment, work practice or operational standard for a hazardous air pollutant proposed or promulgated under this regulation.

(q) "**Stationary Source**" means any building, structure, facility, or installation which emits or may emit any air pollutant which has been designated as hazardous by the Administrator.

RULE 361.03. UNITS AND ABBREVIATIONS

Used in this subpart are abbreviations and symbols of units of measure. These are defined as follows:

(a) **System International (SI) units of measure:**

A	=	ampere	mol	=	mole
g	=	gram	N	=	newton
Hz	=	hertz	ng	=	nanogram = 10^{-9} gram
J	=	joule	nm	=	nanometer = 10^{-9} meter
K	=	degree Kelvin	Pa	=	pascal
kg	=	kilogram	s	=	second
m	=	meter	V	=	volt
m ³	=	cubic meter	W	=	watt
mg	=	milligram = 10^{-3} gram		=	ohm
mm	=	millimeter = 10^{-3} meter	μg	=	microgram = 10^{-6} gram
Mg	=	megagram = 10^6 gram			

(b) **Other units of measure:**

°C	=	degree Celsius (centigrade)	l	=	liter
cfm	=	cubic feet per minute	lb	=	pound
cc	=	cubic centimeter	lpm	=	liter per minute
d	=	day	min	=	minute
°F	=	degree Fahrenheit	ml	=	milliliter = 10^{-3} liter
ft ²	=	square feet	oz	=	ounces
ft ³	=	cubic feet	psig	=	pounds per square inch gas
gal	=	gallon	°R	=	degree Rankine
in	=	inch	l	=	microliter = 10^{-6} liter
in Hg	=	inches of mercury	v/v	=	volume per volume
			yd ²	=	square yard
in H ₂ O	=	inches of water	yr	=	year

(c) **Chemical nomenclature:**

Be	=	beryllium	H ₂ O	=	water
Hg	=	mercury			

(d) **Miscellaneous:**

act	=	actual	N	=	normal
avg	=	average	O.D.	=	outside diameter
I.D.	=	inside diameter	%	=	percent
M	=	Molar	std	=	standard

RULE 361.04 DELEGATION

(a) Section 112(d) of the Clean Air Act as amended, directs the Administrator of the Environmental Protection Agency to delegate, when appropriate, to each State (on behalf of the Air Pollution Control Districts, in the case of California) the authority to implement and enforce the national emission standards for hazardous air pollutants for stationary sources located in such State.

(b) This Regulation XI implements such delegation to the Air Pollution Control District of San Diego County, for those hazardous air pollutants which are anticipated for this County.

(c) The Federal Regulations for implementation and enforcement of these standards are contained in Part 61, Chapter I, Title 40, Code of Federal Regulations (40 CFR Part 61). The applicable portions of this 40 CFR Part 61 have been adopted in this Regulation XI and the 40 CFR Part 61 Section numbers have been adapted to Regulation XI rule numbers by the addition of the number 300 to each CFR Part 61 Section number.

(d) Appendix A (excluding AIIA, "WAIVER OF COMPLIANCE") and Appendix B to 40 CFR Part 61 are incorporated herein by reference. The following substitutions shall be made for the indicated words or numbers wherever appearing in these 40 CFR Part 61 appendices when they are being used as parts of this Regulations XI:

(1) "Control Officer" for:

"Administrator of the (U.S.) Environmental Protection Agency",

"Administrator", and

"Appropriate U.S. Environmental Protection Agency Regional Office", except where the Administrator retains sole authority for approving alternative or equivalent test methods and alternative standards/work practices.

(2) "Regulation" for "Part"

(3) "Rule" for:

"Section"

"§"

(4) Rule numbers for section numbers by adding 300 to the section numbers.

(e) In addition to the general substitutions of Rule 361.04(d) the following specific revisions shall be made to Appendix A to 40 CFR Part 61:

Appendix AIA - NOTE to read:

NOTE: If the emissions from the source will exceed those limits set by the National Emission Standards for Hazardous Air Pollutants, the source will be in violation and subject to San Diego County Air Pollution Control District and Federal enforcement actions unless granted a waiver of compliance by the Administrator of the U.S. Environmental Protection Agency."

(f) 40 CFR Part 61 changes published in the Federal Register through November 7, 1985 are incorporated as required in the publication, or change, of Regulation XI.

RULE 361.05. PROHIBITED ACTIVITIES

(a) After the effective date of any standard no owner or operator shall construct or modify any stationary source subject to that standard without first obtaining written approval of from the Control Officer in accordance with this subpart, except under an exemption granted by the President under Section 112(c)(2) of the Act. This prohibition applies to sources where construction or modification commenced after the publication date of proposed standards applicable to those sources.

(b) After the effective date of any standard no owner or operator shall operate any new stationary source subject to that standard in violation of the standard, except under an exemption granted by the President under Section 112(c)(2) of the Act.

(c) Ninety days after the effective date of any standard, no owner or operator shall operate any existing source subject to that standard in violation of the standard, except under a waiver granted by the Administrator under this part or under an exemption granted by the President under Section 112(c)(2) of the Act.

RULE 361.06. DETERMINATION OF CONSTRUCTION OR MODIFICATION

An owner or operator may submit to the Control Officer a written request for a determination of whether actions intended to be taken by the owner or operator constitute construction or modification or commencement thereof, of a source subject to a standard. The Control Officer will notify the owner or operator of his determination within 30 days after receiving sufficient information to evaluate the application.

RULE 361.07. APPLICATION FOR APPROVAL OF CONSTRUCTION OR MODIFICATION

(a) The owner or operator shall submit to the Control Officer an application for approval of the construction of any new source or modification of any existing source. The application shall be submitted before the construction or modification is planned to commence, or within 30 days after the effective date if the construction or modification had commenced before the effective date and initial startup has not occurred. A separate application shall be submitted for each stationary source.

(b) Each application for approval of construction shall include:

(1) The name and address of the applicant;

(2) The location or proposed location of the source; and

(3) Technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source, including a description of any equipment to be used for control of emissions. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of such calculations.

(c) Each application for approval of modification shall include, in addition to the information required in Section (b) of this rule:

(1) The precise nature of the proposed changes;

(2) The productive capacity of the source before and after the changes are completed; and

(3) Calculations of estimates of emissions before and after the changes are completed, in sufficient detail to permit assessment of the validity of the calculations.

RULE 361.08. APPROVAL OF CONSTRUCTION OR MODIFICATION

(a) The Control Officer will, notify the owner or operator of approval or intention to deny approval of construction or modification within 60 days after receipt of sufficient information to evaluate an application under Rule 361.07.

(b) If the Control Officer determines that a stationary source for which an application under Rule 361.07 was submitted will, not cause emissions in violation of standard if properly operated, the Control Officer will approve the construction or modification.

(c) Before denying any application for approval or construction or modification the Control Officer will notify the applicant of the Control Officer's intention to issue the denial, together with:

(1) Notice of the information and findings on which such intended denial is based, and

(2) Notice of opportunity for the applicant to present, within such time limit as the Control Officer shall specify, additional information or arguments to the Control Officer before final action on the application.

(d) A final determination to deny any application for approval will be in writing and will specify the grounds on which such denial is based. The final determination will be made within

60 days of presentation of additional information or arguments, or 60 days after the final date specified for presentation, if no presentation is made.

(e) Neither the submission of an application for approval nor the Control Officer's approval of construction or modification shall:

(1) Relieve an owner or operator of legal responsibility for compliance with any applicable provisions of this regulation or of any other applicable Federal, State, or local requirement, or

(2) Prevent the Control Officer from implementing or enforcing this regulation or taking any other action under the Act.

RULE 361.09. NOTIFICATION OF STARTUP

(a) The owner or operator of each stationary source which has an initial startup after the effective date of a standard shall furnish the Control Officer with written notification as follows:

(1) A notification of the anticipated date of initial startup of the source not more than 60 days nor less than 30 days before that date.

(2) A notification of the actual date of initial startup of the source within 15 days after that date.

RULE 361.10. SOURCE REPORTING AND REQUEST FOR WAIVER OF COMPLIANCE

(a) The owner or operator of each existing source or each new source which had an initial startup before the effective date shall provide the following information in writing to the Control Officer within 90 days after the effective date:

(1) Name and address of the owner or operator.

(2) The location of the source.

(3) The type of hazardous pollutants emitted by the stationary source.

(4) A brief description of the nature, size, design, and method of operation of the stationary source including the operating design capacity of the source. Identify each point of emission for each hazardous pollutant.

(5) The average weight per month of the hazardous materials being processed by the source, over the last 12 months preceding the date of the report.

(6) A description of the existing control equipment for each emission point including:

- (i) Each control device for each hazardous pollutant; and
- (ii) Estimated control efficiency (percent) for each control device.

(7) A statement by the owner or operator of the source as to whether he can comply with the standards within 90 days after the effective date.

(b) The owner or operator of an existing source unable to comply with an applicable standard may request a waiver of compliance with that standard from the Administrator of the U.S. Environmental Protection Agency for a period not exceeding 2 years after the effective date. Any request of a copy of which shall be provided to the Control Officer, shall be in writing and shall include the following information:

(1) A description of the controls to be installed to comply with the standard.

(2) A compliance schedule, including the date each step toward compliance will be reached. The list shall include as a minimum the following dates:

(i) Date by which contracts for emission control systems or process changes for emission control will be awarded, or date by which orders will be issued for the purchase of component parts to accomplish emission control or process changes;

(ii) Date of initiation of on-site construction or installation of emission control equipment or process changes;

(iii) Date by which on-site construction or installation of emission control equipment or process change is to be completed; and

(iv) Date by which final compliance is to be achieved.

(3) A description of interim emission control steps which will be taken during the waiver period.

(c) Any change in the information provided under Section (a) of this rule or Rule 361.07(b) shall be provided to the Control Officer and the Administrator within 30 days after such change. However, any change will result from modification of the source, Rules 361.07(c) and 361.08 apply.

(d) A possible format for reporting under this rule is included as Appendix A to 40 CFR Part 61. Advice on reporting the status of compliance may be obtained from the Control Officer.

RULE 361.11. WAIVER OF COMPLIANCE

(a) Based on the information provided in any request under Rule 361.10, or other information, the Administrator may grant a waiver of compliance with a standard for a period not exceeding two years after the effective date of the standard.

(b) The waiver will be in writing and will:

(1) Identify the stationary source covered;

(2) Specify the termination date of the waiver;

(3) Specify dates by which steps toward compliance are to be taken; and

(4) Specify any additional conditions which the Administrator determines necessary to assure installation of the necessary controls within the waiver period and to assure protection of the health of persons during the waiver period.

(c) The Administrator may terminate the waiver at an earlier date than specified if any specification under Subsection (b)(3) and (b)(4) of the rule are not met.

(d) Before denying any request for a waiver, the Administrator will notify the owner or operator making the request of the Administrator's intention to issue the denial, together with:

(1) Notice of the information and findings on which the intended denial is based; and

(2) Notice of opportunity for the owner or operator to present, within the time limit the Administrator specifies, additional information or arguments to the Administrator before final action on the request.

(e) A final determination to deny any request for a waiver will be in writing and will set forth the specific grounds on which the denial is based. The final determination will be made within 60 days after presentation of additional information or argument; or within 60 days after the final date specified for the presentation if no presentation is made.

(f) The granting of a waiver under this rule shall not abrogate the Administrator's authority under Section 114 of the Act.

RULE 361.12. COMPLIANCE WITH STANDARDS AND MAINTENANCE REQUIREMENTS

(a) Compliance with numerical emission limits shall be determined by emission tests established in Rule 361.13 unless otherwise specified in an individual subpart.

(b) Compliance with design, equipment, work practice or operational standards shall be determined as specified in an individual subpart.

(c) The owner or operator of each stationary source shall maintain and operate the source, including associated equipment for air pollution control, in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Control Officer which may include, but is not limited to, monitoring results, review of operating and maintenance procedures, and inspection of the source.

(d) (1) If, in the Administrator's judgment, an alternative means of emission limitation will achieve a reduction in emissions of a pollutant from a source at least equivalent to the reduction in emissions of that pollutant from the source achieved under any design, equipment, work practice or operational standard, the Administrator will publish in the Federal Register a notice permitting the use of the alternative means for purposes of compliance with the standard. The notice will restrict the permission to the source(s) or category(ies) of sources on which the alternative means will achieve equivalent emission reductions. The notice may condition permission on requirements related to the operation and maintenance of the alternative means.

(2) Any notice under Subsection (d)(1) shall be published only after notice and an opportunity for a hearing.

(3) Any person seeking permission under this Section shall, unless otherwise specified in the applicable subpart, submit a proposed test plan or the results of testing and monitoring, a description of the procedures followed in testing or monitoring, and a description of pertinent conditions during testing or monitoring.

RULE 361.13. EMISSION TESTS AND WAIVER OF EMISSION TESTS

(a) If required to do emission testing by an applicable subpart and unless a waiver of emission testing is obtained under this rule, the owner or operator shall test emissions from the source:

(1) Within 90 days after the effective date, for an existing source or a new source which has an initial startup date before the effective date; or

(2) Within 90 days after initial startup, for a new source which has an initial startup date after the effective date.

(b) The Control Officer may require an owner or operator to test emissions from the source at any other time.

(c) The owner or operator shall notify the Control Officer of the emission test at least 30 days before the emission test to allow the Control Officer the opportunity to have an observer present during the test.

(d) If required to do emission testing, the owner or operator of each new source and, at the request of the Control Officer, the owner or operator of each existing source shall provide emission testing facilities as follows:

- (1) Sampling ports adequate for test methods applicable to each source.
- (2) Safe sampling platform(s).
- (3) Safe access to sampling platform(s).
- (4) Utilities for sampling and testing equipment.
- (5) Any other facilities that the Control Officer needs to safely and properly test a source.

(e) Each emission test shall be conducted under such conditions as the Control Officer shall specify based on design and operational characteristics of the source.

(f) Unless otherwise specified in an applicable subpart, samples shall be analyzed and emissions determined within 30 days after each emission test has been completed. The owner or operator shall report the determinations of the emission test to the Control Officer by a registered letter sent before the close of business on the 31st day following the completion of the emission test.

(g) The owner or operator shall retain at the source and make available, upon request, for inspection by the Control Officer, for a minimum of two years, records of emission test results and other data needed to determine emissions.

(h) (1) Emission tests shall be conducted as set forth in this rule, the applicable subpart, and Appendix B to 40 CFR; unless the Control Officer:

(i) Specifies or approves the use of a reference method with minor changes in methodology; or

(ii) The Administrator approves the use of an alternative method, or

(iii) The Control Officer waives the requirement for emission testing because the owner or operator of a source has demonstrated by other means to the Control Officer's satisfaction that the source is in compliance with the standard.

(2) If the Control Officer finds reasonable grounds to dispute the results obtained by an alternative method, he may require the use of a reference method. If the results of the reference and alternative methods do not agree, the results obtained by the reference method prevail.

(3) The owner or operator may request approval for the use of an alternative method at any time, except:

(i) For an existing source or a new source that had an initial startup before the effective date, any request for use of an alternative method during the initial emission test shall be submitted to the Control Officer within 30 days after the effective date, or with the request for a waiver of compliance if one is submitted under Rule 361.10(b); or

(ii) For a new source that has an initial startup after the effective date, any request for use of an alternative method during the initial emission test shall be submitted to the Control Officer no later than with the notification of anticipated startup required under Rule 361.09.

(i) (1) Emission tests may be waived upon written application to the Control Officer if, in the Control Officer's judgment, the source is meeting the standard, or the source is being operated under a waiver of compliance or the owner or operator has requested a waiver of compliance and the Administrator is still considering that request.

(2) If application for waiver of the emission test is made, the application shall accompany the information required by Rule 361.10 or the notification of startup required by Rule 361.09, whichever is applicable. A possible format is contained in Appendix A to 40 CFR Part 61.

(3) Approval of any waiver granted under this rule shall not abrogate the Administrator's authority under the Act or in any way prohibit the Administrator from later cancelling the waiver. The cancellation will be made only after notice is given to the owner or operator of the source.

RULE 361.14. MONITORING REQUIREMENTS

(a) Unless otherwise specified, this rule applies to each monitoring system required under each subpart which requires monitoring.

(b) Each owner or operator shall maintain and operate each monitoring system as specified in the applicable subpart and in a manner consistent with good air pollution control practice for minimizing emissions. Any unavoidable breakdown or malfunction of the monitoring system shall be repaired or adjusted as soon as practicable after its occurrence. The Control Officer's determination of whether acceptable operating and maintenance procedures are being used will be based on information which may include, but not be limited to, review of operating and maintenance procedures, manufacturer recommendations and specifications, and inspection of the monitoring system.

(c) When required by the applicable subpart, and at any other time the Control Officer may require, the owner or operator of a source being monitored shall conduct a performance evaluation of the monitoring system and furnish the Control Officer with a copy of a written report of the results within 60 days of the evaluation. Such a performance evaluation shall be conducted according to the applicable specifications and procedures described in the applicable subpart. The owner or operator of the source shall furnish the Control Officer with written

notification of the date of the performance evaluation at least 30 days before the evaluation is to begin.

(d) When the effluents from a single source, or from two or more sources subject to the same emission standards, are combined before being released to the atmosphere, the owner or operator shall install a monitoring system on each effluent or on the combined effluent. If two or more sources are not subject to the same emission standards, the owner or operator shall install a separate monitoring system on each effluent, unless otherwise specified. If the applicable standard is a mass emission standard and the effluent from one source is released to the atmosphere through more than one point, the owner or operator shall install a monitoring system at each emission point unless the installation of fewer system is approved by the Control Officer.

(e) The owner or operator of each monitoring system shall reduce the monitoring data as specified in each applicable subpart. Monitoring data recorded during periods of unavoidable monitoring system breakdowns, repairs, calibration checks, and zero and span adjustments shall not be included in any data average.

(f) The owner or operator shall maintain records of monitoring data, monitoring system calibration checks, and the occurrence and duration of any period during which the monitoring system is malfunctioning or inoperative. These records shall be maintained at the source for a minimum of two years and made available, upon request for inspection by the Control Officer.

(g) (1) Monitoring shall be conducted as set forth in this rule and the applicable subpart unless the Control Officer:

(i) Specifies or approves the use of the specified monitoring requirements and procedures with minor changes in methodology, or

(ii) Approves the use of alternatives to any monitoring requirements or procedures.

(2) If the Control Officer finds reasonable grounds to dispute the results obtained by an alternative monitoring method, the Control Officer may require the monitoring requirements and procedures specified in this regulation.

RULE 361.15. MODIFICATION

(a) Except as provided under Section (d) of this rule, any physical or operational change to a stationary source which results in an increase in the rate of emission to the atmosphere of a hazardous pollutant to which a standard applies shall be considered a modification.

(b) Upon modification, an existing source shall become a new source for each hazardous pollutant for which the rate of emission to the atmosphere increases and to which a standard applies.

(c) Emission rate shall be expressed as kg/hr for any hazardous pollutant discharged into the atmosphere for which a standard is applicable. The Control Officer shall use the following to determine the emission rate:

(1) Emission factors as specified in the background information document (BID) for the applicable standard, or in the latest issue of "Compilation of Air Pollutant Emission Factors", EPA Publication No. AP-42, or other emission factors determined by the Control Officer to be superior to AP-42 emission factors, in cases where use of emission factors demonstrates that the emission rate will clearly increase or clearly not increase as a result of the physical or operational change.

(2) Material balances, monitoring data, or manual emission tests in cases where use of emission factors, as referenced in Subsection (c)(1) of this rule, does not demonstrate to the Control Officer's satisfaction that the emission rate will clearly increase or clearly not increase as a result of the physical or operational change, or where an interested person demonstrates to the Control Officer's satisfaction that there are reasonable grounds to dispute the result obtained by the Control Officer using emission factors. When the emission rate is based on results for manual emission tests or monitoring data, the procedures specified in Appendix C of 40 CFR Part 60 shall be used to determine whether an increase in emission rate has occurred. Tests shall be conducted under such conditions as the Control Officer shall specify to the owner or operator. At least three tests runs must be conducted before and at least three after the physical or operational change. If the Control Officer approves, the results of the emission tests required in Rule 361.13(a) may be used for the test runs to be conducted before the physical or operational change. All operating parameters which may affect emissions must be held constant to the maximum degree feasible for all test runs.

(d) The following shall not by themselves, be considered modifications under this regulation:

(1) Maintenance, repair, and replacement which the Control Officer determines to be routine for a source category.

(2) An increase in production rate of a stationary source, if that increase can be accomplished without a capital expenditure on the stationary source.

(3) An increase in the hours of operation.

(4) Any conversion to coal that meets the requirements specified in Section 111(a)(8) of the Act.

(5) The relocation or change in ownership of a stationary source. However, such activities must be reported in accordance with Rule 361.10(c).

RULE 361.16. [RESERVED]

RULE 361.17. [RESERVED]