

RULE 98. BREAKDOWN CONDITIONS: EMERGENCY VARIANCE
(Effective 4/21/78: Rev. Effective 5/28/91)

(a) **DEFINITIONS**

(1) For the purposes of this rule, a **breakdown** condition means an unforeseeable failure or malfunction of either 1) any air pollution control equipment or related operating equipment which causes a violation of any emission limitation or restriction prescribed by these Rules and Regulations, or by State Law, or 2) any in-stack continuous monitoring equipment; which

(i) is not the result of neglect or disregard of any air pollution control law or rule or regulation;

(ii) is not intentional or the result of negligence;

(iii) is not the result of improper maintenance;

(iv) does not constitute a nuisance; and

(v) is not a recurrent breakdown of the same equipment.

(2) For the purposes of this rule, **negligence** means failure to use the care that a prudent person usually exercises.

(3) For the purposes of this rule, **improper maintenance** means not performing normal, regular maintenance.

(b) BREAKDOWN PROCEDURES

(1) The owner or operator shall notify the Air Pollution Control Officer of any occurrence which constitutes a breakdown condition; such notification shall identify the time of the start of the occurrence, estimated duration of the occurrence (if known), specific location, equipment involved, and (to the extent known) the cause(s) of the occurrence, and shall be given as soon as reasonably possible, but no later than one hour after its detection. The notification may be by direct phone contact during normal working hours or to the District's message recording phone during nonworking hours. The time of the call must be included in the message.

(2) The Air Pollution Control Officer shall establish written procedures and guidelines, including appropriate forms for logging of initial reports, investigation, and enforcement followup, to ensure that all reported breakdown occurrences are handled uniformly to final disposition.

(3) Upon receipt of notification pursuant to Subsection (b)(1) the Air Pollution Control Officer shall promptly investigate to tentatively determine whether the occurrence constitutes a breakdown condition.

(c) DISPOSITION OF SHORT-TERM BREAKDOWN CONDITIONS
(Rev. Effective 1/12/79)

(1) For an occurrence which constitutes a breakdown condition, and which persists only until the end of the production run or 24 hours, whichever is sooner (except for continuous monitoring equipment, for which the period shall be 96 hours), the Air Pollution Control Officer may elect to take no enforcement action if the owner or operator demonstrates to the Air Pollution Control Officer's satisfaction that a breakdown conditions exists and the following requirements are met:

- (i) the owner operator submits the notification required by Subsection (b)(1); and
- (ii) the owner or operator immediately undertakes appropriate corrective measures and comes into compliance, or if this is not practicable without loss of materials or damage to equipment elects to shutdown before the next production run or with 24 hours, whichever is sooner (except for continuous monitoring equipment for which the period shall be 96 hours); in any event, the owner or operator must take whatever steps are practicable to minimize the impact of the breakdown as soon as possible after the breakdown; and
- (iii) the Air Pollution Control Officer determines the breakdown does not interfere with the attainment or maintenance of any national or California ambient air quality standard.

(2) An occurrence which constitute a breakdown condition shall not persist longer than the end of the production run or 24 hours, whichever is sooner (except for continuous monitoring equipment, for which the period shall be 96 hours), unless the owner or operator has obtained an emergency variance.

(3) For the purposes of this rule production run means any discrete process or operation including, but not limited to, any batch processor bulk delivery.

(d) EMERGENCY VARIANCE PROCEDURES FOR BREAKDOWN CONDITIONS (Rev. Effective 5/28/91)

(1) If the breakdown condition will either require more than 24 hours to correct or persist longer than the end of the production run (except for continuous, monitoring equipment, for which the period shall be 96 hours) the owner or operator may, in lieu of shutdown, an emergency variance. A request for emergency variance for a breakdown condition shall be filed with the Clerk of the Hearing Board at the San Diego County Administration Center, Room 402, San Diego, California 92101.

(2) No emergency variance for a breakdown condition shall be granted unless the Chairperson or other designated member(s) determines that:

(i) The occurrence constitutes a breakdown condition,

(ii) continued operation is not likely to create an immediate threat or hazard to public health or safety, and

(iii) the requirements for a variance set forth in Health and Safety Code Sections 42352 and 42353 have been met, and

(iv) the continued operation in a breakdown condition will not interfere with the attainment or maintenance of any national or California Ambient Air Quality Standard.

(3) At any time after an emergency variance for a breakdown condition has been granted, the Air Pollution Control Officer may request that the Chairperson or designated member(s) reconsider and revoke, modify or further condition the variance if the Air Pollution Control Officer has good cause to believe that:

(i) continued operation is likely to create an immediate threat or hazard to public health or safety;

(ii) the owner or operator is not complying with all applicable conditions of the variance;

(iii) a breakdown condition no longer exists; or

(iv) final compliance is not being accomplished as expeditiously as practicable.

(4) An emergency variance for a breakdown condition shall remain in effect only for as long as necessary to repair or remedy the breakdown conditions, but in no event after a properly noticed hearing to consider an interim or 90-day variance has been held, or 30 days from the date of the subject occurrence, whichever is sooner.

(e) REPORTING REQUIREMENTS

(1) Within one week after breakdown occurrence has been corrected, the owner or operator shall submit a written report to the Air Pollution Control Officer which includes:

(i) a statement that the occurrence has been corrected, together with the date of correction, and proof of compliance which is acceptable to the Air Pollution Control Officer;

(ii) a specific statement of the reason(s) or cause(s) for the occurrence sufficient to enable the Air Pollution Control Officer to determine whether the occurrence was a breakdown condition;

(iii) a description of the corrective measures undertaken and/or to be undertaken to avoid such an occurrence in the future;

(iv) an estimate of the emissions cause by the occurrence; and

(v) permit numbers and serial numbers of the equipment or controls which failed, and pictures of the equipment or controls if available.

(2) The Air Pollution Control Officer may, at the request of the owner or operator, for good cause, extend up to 30 days the deadline for submitting the report required by this section.

(f) ENFORCEMENT

(1) The burden shall be on the owner or operator of the source to provide sufficient information to demonstrate that a breakdown did occur. If the owner or operator fails to provide sufficient information, the Air Pollution Control Officer shall undertake appropriate enforcement action.

(2) Any failure to comply or to comply in a timely manner with the reporting requirements established in Subsections (b)(1) and (e)(1) of this rule shall constitute a separate violation of this rule.

(3) It shall constitute a separate violation of this rule for any person to file with the Air Pollution Control Officer a report which falsely, or without probable cause, claims that an occurrence is a breakdown.

(4) If at any time the Air Pollution Control Officer determined that the occurrence does not constitute a breakdown condition as defined by this rule, the Air Pollution Control Officer may take appropriate enforcement action, including but not limited to seeking fines, and abatement order, or an injunction against further operation.

(g) HEARING BOARD STANDARDS AND GUIDELINES

The Hearing Board shall adopt standards and guidelines consistent with this rule to assist the Chairperson or other designated member(s) of the Hearing Board in determining whether to grant or deny an emergency variance and to assist the Air Pollution Control Officer in the enforcement of this rule.