

The Texas Commission on Environmental Quality (agency or commission) proposes amendments to Subchapter F, *Emissions Events and Scheduled Maintenance, Startup, and Shutdown Activities*, Division 3, *Operational Requirements, Demonstrations, and Actions to Reduce Excessive Emissions*, §§101.221 - 101.223. These amendments are being proposed as revisions to the Texas state implementation plan (SIP) which will be submitted to the United States Environmental Protection Agency (EPA).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

Sections 101.221 - 101.223 were adopted by the commission on August 21, 2002 for the primary purpose of incorporating the statutory requirements of House Bill 2912, §5.01 and §18.14, 77th Legislature, 2001, into the commission's rules. Sections 101.221 - 101.223 were submitted to EPA on September 3, 2002 as revisions to the Texas SIP. This rulemaking action is required to obtain federal approval of the emissions events rules as part of the Texas SIP and to satisfy the notice of deficiency for the Texas Title V Operating Permits Program.

In addition to deleting repetitive language, this rulemaking would delete the phrase "exempt from compliance with emissions limitations" in these three sections. The term "exemption" has been used in the commission's rules regarding excess emissions since 1979. In enforcement cases for exceedances of emissions and opacity limits, the long-standing practice is to conduct case-by-case reviews and to use enforcement discretion as appropriate, and beginning in 2000, by using specific criteria incorporated in these rules in §101.11. Section 101.11 was subsequently repealed and the criteria were revised and incorporated into §101.222 on August 21, 2002. The use of the criteria, with the burden of proof on

the owner or operator, effectively operated as an affirmative defense in certain enforcement actions, rather than an exemption from compliance. The proposed amendments are made to eliminate any confusion as to whether there is an automatic exemption from compliance with emissions and opacity limits. There is no automatic exemption from compliance with emissions and opacity limits. This rulemaking action will not change current enforcement practice regarding exceedances of emission and opacity limits, nor revise any of the demonstration criteria in §101.222. Rather, it more precisely codifies this enforcement policy so the rules can be approved as a revision to the SIP.

In previous commission rulemakings, EPA expressed concern regarding the use of the term “exemption” in these rules. Regardless of the use of the term “exemption,” the commission has never considered that applicable emissions and opacity limits are automatically suspended during emissions events or startup, shutdown, or maintenance activities; rather, the commission has historically exercised discretion in the method of addressing those exceedances when the regulated entity demonstrated it met the criteria for the event. The commission’s August 21, 2002 preamble adopting the most recent changes to these rules incorporated the concepts of “excessive” and “chronic” emissions; it also explained the historical enforcement practice and how satisfaction of the criteria operates as an affirmative defense in certain enforcement actions, as follows. “The commission will review all emissions events against the requirements of §101.222(a) to determine if the emissions events are excessive, and therefore, not exempt. Facilities with excessive emissions events must comply with the requirements in §101.223 upon notification by the executive director. Any emissions events which are not excessive, but do not satisfy all the criteria in §101.222(b) are not exempt and may be subject to an enforcement action, including penalties and appropriate requirements to minimize the recurrence of

similar events in the future. The commission's past experience has been that the exemption criteria now located in §101.222(b) and (c) for emissions events and scheduled maintenance, startup, and shutdown activities operate much like an affirmative defense in enforcement actions." This adoption preamble, found in the September 6, 2002 issue of the *Texas Register* (27 TexReg 8499 and 8524) also includes other information on the commission's enforcement practices which will not change as a result of this rulemaking action.

This rulemaking would specify that an owner or operator may claim an affirmative defense when the state brings an enforcement action for certain events and activities, but not when the state pursues administrative technical orders and/or injunctive relief. This rulemaking also retains the requirement that the burden of proof is on the owner or operator to prove it meets the demonstration criteria in §101.222 when addressing exceedances of emissions or opacity limits and claiming the affirmative defense. The affirmative defense is not available to claims for failure to take action, record, or report emissions or information about the events or activities as required by law.

The scope of this rulemaking is limited to changes made to obtain federal approval of the emissions events rules as part of the Texas SIP, and which more precisely state the applicability and use of an affirmative defense in certain state enforcement actions. These changes are necessary for the commission to obtain approval of these rules as a SIP revision. The proposed amendments will not limit EPA's authority to take enforcement action. Determinations made under §101.222 in which the owner or operator claims an affirmative defense will not bar actions regarding exceedances of emissions limitations by EPA or citizens under the Federal Clean Air Act.

SECTION BY SECTION DISCUSSION

The proposed revisions to §§101.221 - 101.223 would delete references to an exemption from compliance and more precisely indicate that exceedances of emissions and opacity limits are subject to an affirmative defense to claims brought by the state for certain events and activities other than claims for administrative technical orders and actions for injunctive relief if the owner or operator proves the criteria listed in §101.222. The use of the term “affirmative defense” is necessary to assure that the burden of proof remains on the regulated entity, and that relief from enforcement is not automatic.

This is consistent with EPA’s position regarding excess emissions and when affirmative defenses apply, which upholds the fundamental requirements of attainment and maintenance of the national ambient air quality standards and any other requirement of the Federal Clean Air Act. This rulemaking action will not change current enforcement practice which already incorporates the concept of an affirmative defense for exceedances of emissions and opacity limitations.

Administrative changes are proposed throughout the sections to conform to *Texas Register* requirements.

Section 101.221 - Operational Requirements

The proposed amendment to §101.221(e) deletes the sentences “The executive director or any air pollution program with jurisdiction may request documentation of the criteria in §101.222 of this title at their discretion. Satisfying the burden of proof is a condition to unauthorized emissions being considered not excessive and exempt from compliance with authorized emission limitations under §101.222 of this title.” The change to §101.221(e) would delete repetitive language within this

subsection with regard to burden of proof, and would ensure consistency with the change to the rule language proposed in §101.222. As more fully explained in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES section, this rulemaking action will not change existing commission practice with regard to enforcement actions regarding excess emissions, nor the requirement that the owner or operator has the burden of proving all the criteria identified in §101.222.

Section 101.222 - Demonstrations

The proposed amendment to §101.222(a) would delete the sentence “Emissions events determined to be excessive are not exempt from compliance with emission limitations.” This is necessary to eliminate any confusion as to whether some emissions events or scheduled maintenance, startup, or shutdown activities are entitled to an automatic exemption, and is consistent with the other changes in §101.222.

The proposed amendments to §101.222(b) would revise the wording from “Emissions events determined not to be excessive by the executive director. . . are exempt from compliance with emissions limitations if the owner or operator satisfies . . .” to “Emissions events determined not to be excessive are subject to an affirmative defense to all claims in enforcement actions brought by the state for these events other than claims for administrative technical orders and actions for injunctive relief if the owner or operator proves all of the following criteria are met. . .”

The proposed amendments to §101.222(c) would revise the wording from “Emissions from any scheduled maintenance, startup, or shutdown activity are exempt from compliance with emissions

limitations if the owner or operator satisfies . . .” to “Emissions from any scheduled maintenance, startup, or shutdown activity subject to an affirmative defense to all claims in enforcement actions brought by the state for these activities other than claims for administrative technical orders and actions for injunctive relief if the owner or operator proves all of the following criteria are met. . .”

The proposed amendments to §101.222(d) would revise the wording from “Excess opacity events that are subject to §101.201(e) of this title, and other opacity events where the owner or operator did not experience an emissions event, are exempt from compliance with applicable opacity limitations if the owner or operator satisfies. . .” to “Excess opacity events that are subject to §101.201(e) of this title, and other opacity events where the owner or operator did not experience an emissions event, are subject to an affirmative defense to all claims in enforcement actions if brought by the state for these events other than claims for administrative technical orders and actions for injunctive relief if the owner or operator proves all of the following criteria are met. . .”

The proposed amendments to §101.222(e) would revise the wording from “Excess opacity events, or other opacity events where the owner or operator did not experience an emissions event, that result from any scheduled maintenance, startup, or shutdown activity are exempt from compliance with applicable opacity limitations if the owner or operator satisfies. . .” to “Excess opacity events, or other opacity events where the owner or operator did not experience an emissions event, that result from any scheduled maintenance, startup, or shutdown activity are subject an affirmative defense to all claims in enforcement actions brought by the state for these events other than claims for administrative technical orders and actions for injunctive relief if the owner or operator proves all of the following criteria are

met. . .” The proposed changes to §101.222(b) - (e) delete the phrase “exempt from compliance” and more precisely state when an affirmative defense may be claimed in enforcement actions brought by the state. In addition, the word “was” is proposed to be changed to the word “were” in §101.222(e)(8) to show correct subject-verb number agreement.

New subsection (f) is proposed that would not allow the affirmative defenses in subsections (b) - (e) to apply to claims in enforcement actions for failure to take action, record, or report emissions or information required by law. For example, the affirmative defense would not apply in state enforcement actions regarding failure to report as required by §101.201 and §101.211 (relating to Emissions Event Reporting and Recordkeeping Requirements and Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements). Similarly, the affirmative defense would not apply in state enforcement actions regarding failure to comply with 30 TAC §122.145 (relating to Reporting Terms and Conditions), commonly referred to as “deviation reporting requirements” under the Title V Operating Permits Program. The affirmative defense would also not apply in the case where a company is required to maintain controls but fails to do so, such as the requirement found in 30 TAC §115.142 (relating to Control Requirements for Industrial Wastewater Systems) which requires that all components shall be fully covered or be equipped with water seal controls, or with new source review permit provisions that may require special handling of gasses during events or activities subject to Subchapter F requirements.

Existing §101.222(f) is relettered as §101.222(g) and would delete the wording “When the commission finds a frequent or recurring pattern of events under this subchapter, the commission may pursue

penalties and corrective actions from an owner or operator of a facility for unauthorized emissions notwithstanding the exemptions described. . .” and add the sentence “Evidence from past events subject to subsections (b) - (e) of this section is admissible and relevant to demonstrate a frequent or recurring pattern of events, even if the affirmative defense is sustained. This amendment would ensure consistency with the changes to the rule language proposed in §101.222(b) - (e). As more fully explained in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES section, the proposed amendments to §101.222 will not change existing commission practice with regard to enforcement actions regarding exceedances of emissions and opacity limits.

Section 101.223 - Actions to Reduce Excessive Emissions

The proposed amendment to §101.223(c) would revise the wording from “. . . the unauthorized emissions from the event are not exempt from compliance with emission limitations” to “. . . the affirmative defenses in §101.222 of this title do not apply.” This amendment would ensure consistency with the change to the rule language proposed in §101.222. In addition, as more fully explained in the BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES section, this amendment will not change existing commission practice with regard to enforcement actions for excessive emissions.

FISCAL NOTE: COST TO STATE AND LOCAL GOVERNMENT

John Davis, Technical Specialist with Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for units of state and local governments due to implementation of the proposed amendments.

The proposed amendments are intended to obtain approval as a revision to the SIP by eliminating any confusion as to whether there is an automatic exemption from compliance and more precisely stating that an affirmative defense is available for certain enforcement cases regarding exceedances of emissions and opacity limits. The proposed amendments do not implement additional regulations that are not already required by the commission and the EPA.

PUBLIC BENEFIT AND COSTS

Mr. Davis has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from enforcement of and compliance with the proposed amendments would be to eliminate any confusion as to whether there is an automatic exemption from compliance and more precisely stating that an affirmative defense is available for certain enforcement cases regarding exceedances of emissions and opacity limits. The proposed amendments do not implement additional regulations that are not already required by the commission and the EPA. The commission anticipates the proposed amendments will not result in fiscal implications for individuals and businesses.

SMALL AND MICRO-BUSINESS ASSESSMENT

There will not be adverse fiscal implications for small and micro-businesses due to implementation of the proposed amendments, which are intended to eliminate any confusion as to whether there is an automatic exemption from compliance and more precisely state that an affirmative defense is available for certain enforcement cases regarding exceedances of emissions and opacity limits. The proposed amendments do not implement additional regulations that are not already required by the commission and the EPA. The commission anticipates the proposed amendments will not result in fiscal implications for small and micro-businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required, because the proposed rulemaking action does not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225 and has determined that the proposed rulemaking does not meet the definition of a “major environmental rule.” Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). A “major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The proposed amendments are intended to obtain approval as a revision to the

SIP by eliminating any confusion as to whether there is an automatic exemption from compliance and more precisely stating that an affirmative defense is available for certain enforcement cases regarding exceedances of emissions and opacity limits. The proposed amendments do not implement additional regulations that are not already required by the commission and the EPA. This rulemaking also retains the requirement that the burden of proof is on the owner or operator to prove it meets the demonstration criteria in §101.222 when addressing exceedances of emissions or opacity limits. The proposed amendments do not limit the commission's existing authority to enforce when an owner or operator fails to take action, record, or report emissions or information about the events or activities, and makes clear that the affirmative defenses are limited to certain events and activities. The proposed amendments will not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, Texas Government Code, §2001.0225, only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed amendments do not exceed a standard set by federal law or exceed an express requirement of state law. There is no contract or delegation agreement that covers the topic that is the subject of this rulemaking. Finally, this rulemaking was not developed solely under the general powers of the agency, but is authorized by specific sections of the Texas Health and Safety Code and Texas Water Code which

are cited in the STATUTORY AUTHORITY section of this preamble. Therefore, this rulemaking is not subject to the regulatory analysis provisions of Texas Government Code, §2001.0225(b), because the proposed amendments do not meet any of the four applicability requirements.

The commission invites public comment regarding the draft regulatory impact analysis determination during the public comment period.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact analysis for the proposed amendments. The specific purpose of this rulemaking is to amend the emissions events rules to obtain federal approval of the emissions events rules as part of the Texas SIP by eliminating any confusion as to whether there is an automatic exemption from compliance and more precisely stating that an affirmative defense is available for certain enforcement cases regarding exceedances of emissions and opacity limits. Promulgation and enforcement of the proposed amendments would be neither a statutory nor a constitutional taking because they do not affect private real property. Specifically, the proposed amendments do not affect private property in a manner which restricts or limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Therefore, the proposed amendments do not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991,

as amended (Texas Natural Resources Code, §§33.201 *et seq.*), and the commission rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the CMP. As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Coastal Management Program, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed this action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the action is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(l)). No new sources of air contaminants will be authorized and the proposed revisions will maintain the same level of emissions control as the existing rules. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies.

The commission solicits comments on the consistency of the proposed rulemaking with the CMP during the public comment period.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

Sections 101.221 - 101.223 are applicable requirements under 30 TAC Chapter 122, *Federal Operating Permits*. Upon the effective date of this rulemaking, owners or operators subject to the Federal Operating Permit Program will be required to certify compliance with amended §§101-221 - 101.223.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin, Texas, on August 12, 2003, at 10:00 a.m., at the Texas Commission on Environmental Quality, 12100 Park 35 Circle, Building F, Room 2210. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after each hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend a hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Angela Slupe, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-038-101-AI.

Comments must be received by 5:00 p.m., August 25, 2003. For further information, please contact Brad Toups of the Field Operations Division at (512) 239-1872 or Alan Henderson of the Policy and Regulations Division at (512) 239-1510.

**SUBCHAPTER F: EMISSIONS EVENTS AND SCHEDULED MAINTENANCE, STARTUP,
AND SHUTDOWN ACTIVITIES**
**DIVISION 3: OPERATIONAL REQUIREMENTS, DEMONSTRATIONS, AND ACTIONS
REQUIRED TO REDUCE EXCESSIVE EMISSIONS**
§§101.221 - 101.223

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amendments are also proposed under Texas Health and Safety Code, §382.002, concerning Policy and Purpose, which establishes the commission purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, which authorizes the commission to control the quality of the state air; §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state air; §382.085, concerning Unauthorized Emissions Prohibited, which prohibits emissions except as authorized by commission rule or order; §382.0215, concerning Assessment of Emissions Due to Emissions Events, which authorizes the commission to collect and assess unauthorized emissions data due to emissions events; and §382.0216, concerning Regulation of Emissions Events, which authorizes the commission to establish criteria for determining when emissions events are excessive and to require facilities to take action to reduce emissions from excessive emissions events.

The proposed amendments implement Texas Health and Safety Code, §§382.002, 382.011, 382.012, 382.085, 382.215, and 382.216; and House Bill 2912, §5.01 and §18.14, 77th Legislature, 2001.

§101.221. Operational Requirements.

(a) - (d) (No change.)

(e) The owner or operator of a facility has the burden of proof to demonstrate that the criteria identified in §101.222(a) and (b) of this title (relating to Demonstrations) for emissions events, or in §101.222(c) of this title for scheduled maintenance, startup, or shutdown activities are satisfied for each occurrence of unauthorized emissions. The owner or operator of a facility has the burden of proof to demonstrate that the criteria identified in §101.222(d) of this title for excess opacity events, or in §101.222(e) of this title for excess opacity events resulting from scheduled maintenance, startup, or shutdown activities are satisfied for each excess opacity event. [The executive director or any air pollution program with jurisdiction may request documentation of the criteria in §101.222 of this title at their discretion. Satisfying the burden of proof is a condition to unauthorized emissions being considered not excessive and exempt from compliance with authorized emission limitations under §101.222 of this title.]

(f) (No change.)

§101.222. Demonstrations.

(a) Excessive emissions event determinations. The executive director shall determine when emissions events are excessive. [Emissions events determined to be excessive are not exempt from compliance with emission limitations.] To determine whether an emissions event or emissions events are excessive, the executive director will evaluate emissions events using the following criteria:

(1) - (6) (No change.)

(b) Non-excessive emissions events. Emissions events determined not to be excessive [by the executive director after applying the criteria in subsection (a) of this section] are subject to an affirmative defense to all claims in enforcement actions brought by the state for these events, other than claims for administrative technical orders and actions for injunctive relief, [are exempt from compliance with emission limitations] if the owner or operator proves [satisfies] all of the following criteria are met:

(1) - (11) (No change.)

(c) Scheduled maintenance, startup, or shutdown activity. Emissions from any scheduled maintenance, startup, or shutdown activity are subject to an affirmative defense to all claims in enforcement actions brought by the state for these activities, other than claims for administrative

technical orders and actions for injunctive relief, [exempt from compliance with emission limitations,]

if the owner or operator proves [satisfies] all of the following criteria are met:

(1) - (9) (No change.)

(d) Excess opacity events. Excess opacity events that are subject to §101.201(e) of this title, and other opacity events where the owner or operator did not experience an emissions event, are subject to an affirmative defense to all claims in enforcement actions brought by the state for these events, other than claims for administrative technical orders and actions for injunctive relief, [exempt from compliance with applicable opacity limitations] if the owner or operator proves [satisfies] all of the following criteria are met:

(1) - (6) (No change.)

(7) the owner or operator actions in response to the opacity event were documented by contemporaneous operation logs or other relevant evidence; [and]

(8) - (9) (No change.)

(e) Opacity events resulting from scheduled maintenance, startup, or shutdown activity. Excess opacity events, or other opacity events where the owner or operator did not experience an emissions event, that result from any scheduled maintenance, startup, or shutdown activity are subject

to an affirmative defense to all claims in enforcement actions brought by the state for these events, other than claims for administrative technical orders and actions for injunctive relief [exempt from compliance with applicable opacity limitations] if the owner or operator proves [satisfies] all of the following criteria are met:

(1) - (7) (No change.)

(8) the owner or operator actions during the opacity event were [was] documented by contemporaneous operating logs or other relevant evidence; and

(9) (No change.)

(f) The affirmative defenses to claims in enforcement actions referenced in subsections (b) - (e) do not apply to claims for failure to take action, record, or report emissions or information about the events or activities as required by law.

(g) [(f)] Frequent or recurring pattern. Evidence from past events subject to subsections (b) - (e) of this section is admissible and relevant to demonstrate a frequent or recurring pattern of events, even if the affirmative defense is sustained. [When the commission finds a frequent or recurring pattern of events under this subchapter, the commission may pursue penalties and corrective actions from an owner or operator of a facility for unauthorized emissions notwithstanding the exemptions described in subsections (b) - (e) of this section].

§101.223. Actions to Reduce Excessive Emissions.

(a) - (b) (No change.)

(c) If an emissions event recurs because an owner or operator fails to take corrective action as required and in the time frames specified by a CAP approved by the commission, the emissions event is considered excessive and the affirmative defenses in §101.222 of this title (relating to Demonstrations) do not apply [unauthorized emissions from the event are not exempt from compliance with emission limitations].

(d) (No change.)