

RULE 602 BREAKDOWN CONDITIONS: EMERGENCY VARIANCE

**Adopted 8-1-62
(Amended 12-6-78)**

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100 GENERAL

- 101 **PURPOSE:** To specify conditions and procedures for breakdowns and emergency variances.

200 DEFINITIONS

- 201 **BREAKDOWN CONDITION:** An unforeseeable failure or malfunction of 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, where such failure or malfunction:
- 201.1 Is not the result of neglect or disregard of any pollution control law or Rule or Regulation;
 - 201.2 Is not intentional or the result of negligence;
 - 201.3 Is not the result of improper maintenance;
 - 201.4 Does not constitute a public nuisance;
 - 201.5 Is not a recurrent breakdown of the same equipment.

300 STANDARDS**301 BREAKDOWN PROCEDURES**

- 301.1 A person shall notify the Air Pollution Control Officer of any occurrence which constitutes a breakdown condition as soon as reasonably possibly, but no later than one hour after its detection. If the breakdown occurs when the Air Pollution Control Officer cannot be contacted, the report of breakdown shall be made at the commencement of the next regular working day.
- 301.2 The notification shall identify the time, specific location, equipment involved, and to the extent known the cause(s) of the occurrence.
- 301.3 Upon notification of the breakdown condition, the Air Pollution Control Officer shall investigate the breakdown condition in accordance with uniform written procedures and guidelines relating to logging of initial reports on appropriate forms, investigation, and enforcement follow-up. If the occurrence does not constitute a breakdown condition, the Air Pollution Control Officer may take appropriate enforcement action.

302 DISPOSITION OF SHORT-TERM BREAKDOWN CONDITIONS

- 302.1 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 air pollution monitoring equipment, for which the period shall be 96 hours) shall constitute a violation of any applicable emission limitation or restriction prescribed by these Rules and Regulations; however, the Air Pollution Control Officer may elect to take no enforcement action if the owner or operator demonstrates to his satisfaction that a breakdown condition exists and the following requirements are met:
- a. The notification required in Section 301.1 is made; and
 - b. Immediate appropriate corrective measures are undertaken and compliance is achieved, or the process is shutdown for corrective measures before commencement of the next production run or within 24 hours, whichever is sooner (except for continuous air pollution monitoring equipment for which the period shall be 96 hours). If the owner or operator elects to shut down rather than come into immediate compliance, (s)he must nonetheless take whatever steps are possible to minimize the impact of the breakdown within the 24 hour period; and
 - c. The breakdown does not interfere with the attainment and maintenance of any national ambient air quality standard.

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

303 **EMERGENCY VARIANCE:** If the breakdown condition will either require more than 24 hours to correct or persists longer than the end of the production run (except for continuous air pollution monitoring equipment, for which the period shall be 96 hours) the owner or operator may, in lieu of shutdown, request the Air Pollution Control Officer to commence the emergency variance procedure set forth in Section 304.

304 **EMERGENCY VARIANCE PROCEDURE:**

304.1 Upon receipt of a request for an emergency variance, the Air Pollution Control Officer shall contact the chairperson of the Hearing Board or other designated member(s) of the Hearing Board, to establish a time and place for consideration of the request. The Air Pollution Control Officer shall inform the owner or operator of the source of such time and place. During consideration of the emergency variance, the Air Pollution Control Officer shall recommend whether an emergency variance should be granted. The owner or operator of the source shall be entitled to present testimony and evidence at the hearing. The burden shall be on the owner or operator to establish that a breakdown condition exists. Thereafter, the chairperson or other designated member(s) may, without notice of hearing, grant or deny an emergency variance. Reasonable conditions may be included in the variance. A written order confirming the decision, with appropriate findings, shall be issued within five days.

304.2 No emergency variance shall be granted unless the chairperson or other designated member(s) finds that:

- a. The occurrence constitutes a breakdown condition;
- b. Continued operation is not likely to create an immediate threat or hazard to public health or safety; and
- c. The requirements for a variance set forth in Health & Safety Code Sections 42352 and 42353 have been met;
- d. The continued operation in a breakdown condition will not interfere with the attainment or maintenance of the national ambient air quality standards.

304.3 At any time after an emergency variance has been granted, the Air Pollution Control Officer may request for good cause that the chairperson or designated member(s) reconsider and revoke, modify or further condition the variance. The procedures set forth in Section 304.1 shall govern any further proceedings conducted under this section.

304.4 An emergency variance shall remain in effect only for as long as necessary to repair or remedy the breakdown condition, but in no event after a properly noticed hearing to consider an interim or 90 day variance has been held, or 15 days from the date of the subject occurrence, whichever is sooner.

400 ADMINISTRATIVE REQUIREMENTS

401 **REPORTING REQUIREMENTS:** Within one week after a breakdown condition has been corrected, the owner or operator shall submit a written report to the Air Pollution Control Officer on forms supplied by the Air Pollution Control Officer describing the causes of the breakdown, corrective measures taken, estimated emissions during the breakdown and a statement that the condition has been corrected, together with the date of correction and proof of compliance. 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 submittal of the report described in this subsection.

- 401.1 The burden of proof 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.
 - 401.2 Any failure to comply, or comply in a timely manner, with the reporting requirements established in Sections 301.1 and 401 of the rule shall constitute a separate violation of this rule.
 - 401.3 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 condition.
- 402 **HEARING BOARD STANDARDS:** 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.

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