

#### **401 KAR 50:055. General compliance requirements.**

RELATES TO: KRS Chapter 224

STATUTORY AUTHORITY: KRS 224.10-100

CERTIFICATION STATEMENT:

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the Environmental and Public Protection Cabinet to prescribe administrative regulations for the prevention, abatement, and control of air pollution. This administrative regulation establishes requirements for compliance during shutdown and malfunctions; establishes requirements for demonstrating compliance with standards; establishes requirements for compliance when a source is relocated within the Commonwealth of Kentucky; and other general compliance requirements.

##### Section 1. Emissions During Shutdown and Malfunction.

(1) Emissions which, due to shutdown or malfunctions, temporarily exceed the standard set forth by the cabinet shall be deemed in violation of such standards unless the requirements of this section are satisfied and the determinations specified in subsection (4) of this section are made.

(2) When emissions during any planned shutdown and ensuing start-up will exceed the standards, the owner or operator of the source shall notify the director or his designee no later than three (3) days before the planned shutdown. However, if the shutdown is necessitated by events which the owner or operator could not reasonably have foreseen three (3) days before the shutdown, then such notification shall be given immediately following the decision to shut down. The notice shall be in writing and shall specify the name of the air contaminant source, its location, the address and telephone number of the person responsible for the source, the reasons for and duration of the proposed shutdown, the date and time for the action, the physical and chemical composition, rate and concentration of the emissions during such shutdown and ensuing start-up, the basis for determination that such shutdown is necessary, and the measures which will be taken to minimize the extent and duration of the emissions during such shutdown and ensuing start-up.

(3) When emissions due to malfunctions, unplanned shutdowns or ensuing start-ups are or may be in excess of the standards, the owner or operator shall notify the director by telephone as promptly as possible, and shall cause written notice when requested by the director to be sent to the director. Such notice shall specify the name of the source, its location, the address and telephone number of the person responsible for the source, the nature and cause of the malfunctions, or unplanned shutdown, the date and time when the malfunction was first observed, the expected duration, the nature of the action to be taken to correct the malfunction, and an estimate of the physical and chemical composition, rate and concentration of the emission.

(4) A source shall be relieved from compliance with the standards set forth by the cabinet if the director determines, upon a showing by the owner or operator of the source, that:

- (a) The malfunction or shutdown and ensuing start-up did not result from the failure by the owner or operator of the source to operate and maintain properly the equipment;
- (b) All reasonable steps were taken to correct, as expeditiously as practicable, the conditions causing the emissions to exceed the standards, including the use of off-shift labor and overtime if necessary;
- (c) All reasonable steps were taken to minimize the emissions and their effect on air quality resulting from the occurrence;
- (d) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance; and

(e) The malfunction or shutdown and ensuing start-up was not caused entirely or in part by poor maintenance, careless operation or any other preventable upset conditions or equipment breakdown.

(5) The director shall notify the owner or operator of the source of the determination made under this section no later than sixty (60) days after the date that all information required by this section has been submitted.

## Section 2. Compliance with Standards and Maintenance Requirements.

(1) An owner or operator of any affected facility subject to any standard within the administrative regulations of the Division for Air Quality shall:

(a) In the case of a new source, demonstrate compliance with the applicable standard(s) within sixty (60) days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after initial start-up of such facility;

(b) In the case of an existing source, demonstrate compliance with the applicable standard before or on the date that final compliance is required by the applicable compliance schedule unless otherwise specified by administrative regulation; and

(c) Maintain the affected facility in compliance with all applicable standards at all times subsequent to the date that compliance is demonstrated.

(2) Compliance with standards in the administrative regulations of the Division for Air Quality shall be demonstrated as follows:

(a) By performance tests as specified in the applicable administrative regulation and according to the requirements and exceptions provided in 401 KAR 50:045.

(b) By methods other than performance tests as provided for by the applicable administrative regulation.

(c) By methods acceptable to the cabinet if the applicable administrative regulation does not specify a performance test or other method of determining compliance.

(3) Compliance with opacity standards in the administrative regulations of the Division for Air Quality shall be determined by Method 9 of Appendix A of 40 CFR 60, filed by reference in 401 KAR 50:015, except as may be provided for by administrative regulation for a specific category of sources. Opacity readings of portions of plumes which contain condensed, uncombined water vapor shall not be used for purposes of determining compliance with opacity standards. The results of continuous monitoring by transmissometer which indicate that the opacity at the time visual observations were made was not in excess of the standard are probative but not conclusive evidence of the actual opacity of an emission, provided that the source shall meet the burden of proving that the instrument used meets (at the time of the alleged violation), performance specification as required by the cabinet, has been properly maintained and (at the time of the alleged violation) calibrated, and that the resulting data have not been tampered with in any way.

(4) The opacity standards set forth in this administrative regulation shall apply at all times except during periods of start-up, shutdown, and as otherwise provided in the applicable standard.

(5) At all times, including periods of start-up, shutdown and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment 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 cabinet which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

(6) Adjustment of opacity standards for emissions from a stack or a control device:

(a) An owner or operator of an affected facility may request the cabinet to determine opacity of emissions from the affected facility during the initial performance tests. Fugitive emissions are not subject to the provisions of this subsection.

(b) Upon receipt from such owner or operator of the written report of the results of the performance tests, the cabinet will make a finding concerning compliance with opacity and other applicable standards. If the cabinet finds that an affected facility is in compliance with all applicable standards for which performance tests are conducted, but during the time such performance tests are being conducted fails to meet any applicable opacity standard, the cabinet shall notify the owner or operator and advise him that he may petition the cabinet within ten (10) days of receipt of notification to make appropriate adjustment to the opacity standard for the affected facility.

(c) The cabinet will grant such a petition upon a demonstration by the owner or operator that the affected facility and associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance tests; that the performance tests were performed under the conditions established by the cabinet; and that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard.

(d) The cabinet will establish an opacity standard for the affected facility meeting the above requirements at a level at which the source will be able, as indicated by the performance and opacity tests, to meet the opacity standard at all times during which the source is meeting the mass or concentration emission standard.

#### Section 3. Shutdown and Relocation.

(1) Any affected facility commencing operations after a shutdown for six (6) months shall demonstrate compliance with the applicable standard(s) within sixty (60) days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after commencing operations.

(2) Any source located within the Commonwealth of Kentucky and moved to another location involving a change of address shall be subject to applicable administrative regulations at the new location or to administrative regulations which were applicable at the original location, whichever is the more stringent.

Section 4. Circumvention. No owner or operator subject to the provisions of the administrative regulations of the Division for Air Quality shall build, erect, install, or use any article, machine, equipment or process, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the use of gaseous diluents to achieve compliance with an opacity standard or with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.

Section 5. Prohibition of Air Pollution. No person shall permit or cause air pollution as defined in 401 KAR 50:010 in violation of administrative regulations promulgated by the cabinet.

(401 KAR 050:055. 5 Ky.R. 361; 982; eff. 6-6-1979; 8 Ky.R. 1041; eff. 9-22-1982; TAm eff. 8-9-2007; Crt eff. 11-21-2018; Crt eff. 11-14-2025.)