

REGULATION V
PERMIT TO OPERATE REGULATIONS

Rule 516 **Upset and Breakdown Conditions**

A. Breakdown Procedure

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, 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 not later than two (2) hours after its detection during normal District business hours.

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

3. Upon receipt of notification pursuant to subsection A.1. above, the Air Pollution Control Officer shall promptly investigate and determine whether the occurrence constitutes a breakdown condition. If the Air Pollution Control Officer determines that the occurrence does not constitute a breakdown condition, the Air Pollution Control Officer may take appropriate enforcement action, including, but not limited to seeking fines, an abatement order, or an injunction against further operation.

B. Disposition of Short-Term Breakdown Conditions

1. An occurrence which constitutes a breakdown condition, and which persists longer than 48 hours, except for continuous 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 demonstrates to his satisfaction that a breakdown condition exists and the following requirements are met:
 - a. The owner or operator submits the notification required by subsection A.1. above; and

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- b. The owner or operator immediately undertakes appropriate corrective measures and comes into compliance, or elects to shut down for corrective measures within 48 hours, except for continuous 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, he must nonetheless take whatever steps are possible to minimize the impact of the breakdown within the 48 hour period; and
 - c. The breakdown does not interfere with the attainment and maintenance of any national ambient air quality standard.
2. An occurrence which constitutes a breakdown condition shall not persist longer than 48 hours, except for continuous monitoring equipment for which the period shall be 96 hours, unless the owner or operator has obtained an emergency variance.

C. Emergency Variance Procedures

- 1. If the breakdown condition will require more than 48 hours to correct, except for continuous 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 subsection C.2. below.
- 2. Upon receipt of a request for an emergency variance, the Air Pollution Control Officer shall contact the chairperson of the Hearing Board, or their designated member(s) of the Hearing Board, who shall conduct deliberations for consideration of the request. The Air Pollution Control Officer shall inform the owner or operator of the source of such deliberation. During consideration of the emergency variance, the Air Pollution Control Officer shall recommend whether any emergency variance should be granted, and the owner or operator of the source shall be entitled to present relevant information or data applicable to the breakdown. The burden shall be on the owner or operator to establish that a breakdown condition exists.

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Thereafter, the chairperson or other designated member(s) may, without notice or hearing, grant or deny an emergency variance. The chairperson or other designated member(s) shall, within five (5) working days, issue a written order confirming the decision, with appropriate findings.

3. No emergency variance shall be granted unless the chairperson or other designated member(s) determines that:
 - a. The occurrence constitutes a breakdown condition; and
 - b. Continued operation is not likely to create a nuisance, an immediate threat, or hazard to public health or safety; and
 - c. The requirements for a variance set forth in Health and Safety Code Sections 42352 and 42353 have been met; and
 - d. The continued operation in a breakdown condition will not interfere with the attainment or maintenance of the national ambient air quality standards.

4. At any time after an emergency variance 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:
 - a. Continued operation is likely to create a nuisance, an immediate threat, or hazard to public health or safety; or
 - b. The owner or operator is not complying with all applicable conditions of the variance; or
 - c. A breakdown condition no longer exists; or
 - d. Final compliance is not being accomplished as expeditiously as practicable.

The procedures set forth in subsection C.2. above shall govern any proceedings conducted under this subsection.

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5. 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 regularly noticed hearing to consider an interim or 90 day variance has been held, or fifteen (15) days from the date of the subject occurrence, whichever is sooner.

D. Reporting Requirements

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

1. A statement that the occurrence has been corrected together with the date of correction and proof of compliance; and
2. 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 breakdown condition; and
3. A description of the corrective measures undertaken and/or to be undertaken to avoid such an occurrence in the future. 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 description required by this subsection; and
4. An estimate of the quantity of, or detailed description of emissions caused by the occurrence; and
5. Pictures of the equipment or control which failed if available.

E. Burden of Proof

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.

F. Failure to Comply with Reporting Requirements

Any failure to comply, or comply in a timely manner, with the reporting requirement established in subsection A.1. and D. 1. through D.5. of this Rule shall constitute a separate violation of this Rule.

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G. **False Claiming of Breakdown Occurrence**

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.

H. **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.