

**RULE 5.2**  
**UPSET/BREAKDOWN CONDITIONS: EMERGENCY VARIANCE**

**ADOPTED** February 23, 1994  
**REVISED** September 8, 2021

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**100 GENERAL**

- 101 **PURPOSE:** To specify conditions and procedures for upsets/breakdowns and emergency variances.
- 102 **APPLICABILITY:** This Rule only applies to any article, machine, equipment, or other contrivance for which a Permit to Operate has been granted by the Air Pollution Control Officer (APCO) of the Yolo Solano Air Quality Management District (District).
- 103 **SEVERABILITY:** If any section, subsection, sentence, clause, phrase or portion of this Rule is, for any reason, held invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, that portion shall be deemed as a separate, distinct and independent provision, and the holding shall not affect the validity of the remaining portions of the Rule.

**200 DEFINITIONS:** Except as defined below, the terms used in this Rule are the same as defined in District Rule 1.1.

- 201 **PROCESS EQUIPMENT:** Any facility, article, machine, equipment, or other contrivance, the use of which may cause the issuance of air contaminants.
- 202 **PRODUCTION RUN:** The continuous operation of producing a batch or set of products. The production run shall commence upon startup of process equipment, and shall terminate when the process is shut down because the produced product is no longer needed, or the equipment or materials are changed to produce a different product.
- 203 **UPSET/BREAKDOWN CONDITION:** An unforeseeable failure or malfunction of 1) any process equipment, air pollution control equipment, or related operating equipment, or 2) any in-stack continuous monitoring equipment; which causes a violation of any emission limitation, restriction, or other condition prescribed by these Rules and Regulations, or by State law; and where such failure or malfunction:
  - 203.1 Is not the result of neglect or disregard of any pollution control law or Rule or Regulation;
  - 203.2 Is not intentional, the result of negligence, or operator error;
  - 203.3 Is not the result of improper maintenance or failure to maintain equipment;

203.4 Does not constitute a public nuisance; and

203.5 Is not a recurrent breakdown of the same equipment.

### **300 STANDARDS**

#### **301 UPSET/BREAKDOWN PROCEDURES**

301.1 A person shall notify the APCO of any occurrence which constitutes an upset/breakdown condition as soon as reasonably possible in the following manner:

- a. Verbal notification shall occur no later than one hour after the detection of an upset/breakdown condition.
- b. Written notification by e-mail to [notify@ysaqmd.org](mailto:notify@ysaqmd.org) shall occur no later than four hours after the detection of an upset/breakdown condition.

301.2 The notification shall identify the following information:

- a. Date and time the breakdown occurred,
- b. Specific location, equipment involved, to the extent known and the cause(s) of the occurrence,
- c. Immediate corrective actions taken, and
- d. If the owner/operator intends to shut down the affected process after the end of the current production run or 24 hours, whichever is sooner, or apply for an emergency variance.

301.3 Upon notification, the APCO, or his/her designee, shall investigate the upset/breakdown condition. If the occurrence does not constitute a breakdown condition, the APCO may take appropriate enforcement action.

#### **302 DISPOSITION OF SHORT-TERM UPSET/BREAKDOWN CONDITIONS**

302.1 An occurrence which constitutes an upset/breakdown condition shall constitute a violation of any applicable emission limitation or restriction prescribed by these Rules and Regulations. However, the APCO may elect to take no enforcement action if the owner or operator

demonstrates to the satisfaction of the APCO that an upset/breakdown condition exists and the following requirements are met:

- a. The notification required in Section 301.1 is made;
- 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, they must nonetheless take whatever steps are possible to minimize the impact of the breakdown within the production run or 24 hour period, whichever is sooner; and
- c. The upset/breakdown does not interfere with the attainment and maintenance of any national ambient air quality standard.

302.2 Failure to obtain a variance for an upset/breakdown condition which persists 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), shall constitute a separate violation of these Rules and Regulations.

303 **EMERGENCY VARIANCE PROCEDURE:** If the upset/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 APCO to commence the emergency variance procedure:

303.1 The individual requesting the emergency variance shall submit the request in writing to the Clerk of the Hearing Board for the District, and remit payment to said Clerk of the filing fee as specified in District Rule 4.4. The written request shall include the requirements stated in District Rule 5.1, Sections 401.2 and 401.3. Requests filed with the Clerk of the Hearing Board may be transmitted electronically, and any such electronically transmitted request shall have the same legal effect as an original.

303.2 Upon receipt of a petition for an emergency variance, the APCO shall contact the chairperson of the Hearing Board or other designated member(s) of the Hearing Board to consider the request. During consideration of the emergency variance, the APCO shall recommend

whether an emergency variance should be granted, denied, reconsidered and revoked, modified, or further conditioned. The burden shall be on the owner or operator to establish that an upset/breakdown condition exists.

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

- a. The occurrence constitutes an upset/breakdown condition;
- b. Continued operation is not likely to create an immediate threat or hazard to public health or safety;
- c. Good cause exists to grant an emergency variance without proceeding with the notice and hearing requirements set forth in California Health & Safety Code (CH&S Code) Sections 40824 and 42351;
- d. The requirements for a variance set forth in CH&S Code Sections 42352 and 42353 have been met; and
- e. The continued operation in an upset/breakdown condition will not interfere with the attainment or maintenance of the national ambient air quality standards.

303.4 The chairperson of the Hearing Board, or any other member of the Hearing Board designated thereby, may issue, without notice and hearing, an emergency variance to the applicant. Reasonable conditions may be included in the variance. A written order confirming the decision, with appropriate findings, shall be issued within five (5) days.

303.5 At any time after an emergency variance has been granted, the APCO 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 303.2 shall govern any further proceedings conducted under this section.

303.6 An emergency variance shall remain in effect only for as long as necessary to repair or remedy the breakdown condition and return to compliance, a hearing to consider an interim or general variance has been held, or up to thirty (30) days from the date of the subject occurrence, whichever is sooner.

## 400 ADMINISTRATIVE REQUIREMENTS

- 401 **REPORTING REQUIREMENTS:** Within one week after an upset/breakdown condition has been corrected, the owner or operator shall submit a written report to the APCO on District approved forms describing the causes of the upset/breakdown, corrective measures taken, estimated emissions during the upset/breakdown, where applicable, and a statement that the condition has been corrected, together with the date of correction and proof of compliance. The APCO 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. Written reports may be transmitted electronically, and any such electronically transmitted reports shall have the same legal effect as an original.
- 401.1 The burden of proof shall be on the owner or operator of the source to provide sufficient information to demonstrate that an upset/breakdown did occur. If the owner or operator fails to provide sufficient information, the APCO shall take 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 an upset/breakdown condition.
- 402 **HEARING BOARD STANDARDS:** The Hearing Board may 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 APCO in the enforcement of this rule.