**Title 33**

**ENVIRONMENTAL QUALITY**

**Part III. Air**

**Chapter 5. Permit Procedures**

**§501. Scope and Applicability**

A. — B.1.c. …

d. any *upset*, as defined in LAC 33:III.~~507.J.1~~502.A; however, the permitting authority shall be advised of such occurrences without delay, in accordance with all applicable upset or emergency provisions of Louisiana Air Quality regulations and of LAC 33:I.Chapter 39; or

B.1.e. — D.7. …

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011 and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 16:613 (July 1990), LR 17:478 (May 1991), LR 19:1420 (November 1993), LR 20:1281 (November 1994), LR 20:1375 (December 1994), LR 23:1677 (December 1997), amended by the Office of the Secretary, LR 25:660 (April 1999), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:997 (May 2002), amended by the Office of Environmental Assessment, LR 31:1063 (May 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2436 (October 2005), LR 32:1842 (October 2006), LR 33:2082 (October 2007), LR 33:2626 (December 2007), LR 35:461 (March 2009), LR 35:2351 (November 2009), LR 37:1145, 1148 (April 2011), LR 37:1391 (May 2011), LR 37:3221, 3233 (November 2011), repromulgated LR 37:3507 (December 2011), amended by the Office of the Secretary, Legal Division, LR 43:520 (March 2017), amended by the Office of the Secretary, Legal Affairs and Criminal Investigation Division, LR 43:2149 (November 2017), amended by the Office of the Secretary, Legal Affairs Division LR 50:

**§502. Definitions**

A. …

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*Upset*—any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the source to exceed a technology-based emissions limitation under the permit due to unavoidable increases in emissions attributable to the situation. An upset shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2445 (November 2000), LR 28:1950 (September 2002), amended by the Office of the Secretary, Legal Affairs Division, LR 36:2553 (November 2010), LR 37:1148 (April 2011), LR 37:1391 (May 2011), amended by the Office of the Secretary, Legal Division, LR 41:2608 (December 2015), LR 42:564 (April 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:749 (April 2018), amended by the Office of the Secretary, Legal Affairs Division, LR 50:

**§507. Part 70 Operating Permits Program**

A. — I.4.b. …

J. ~~Upset Provisions~~Reserved.

~~1. For the purposes of this Subsection, an~~ *~~upset~~* ~~is any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation and that causes the source to exceed a technology-based emissions limitation under the permit due to unavoidable increases in emissions attributable to the situation. An upset shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.~~

~~2. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based emissions limitations provided the owner or operator demonstrates through properly signed, contemporaneous operating logs or other relevant evidence that:~~

~~a. an upset occurred and that the owner or operator can identify the cause(s) of the upset;~~

~~b. the permitted facility was at the time being properly operated;~~

~~c. during the period of the upset the operator took all reasonable steps to minimize levels of emissions that exceeded the emissions standards and other requirements in the permit; and~~

~~d. the owner or operator notified the permitting authority in accordance with LAC 33:I.Chapter 39.~~

~~3. In any enforcement proceeding, the owner and operator seeking to establish the occurrence of an upset has the burden of proof.~~

~~4. The provisions of this Subsection are in addition to any emergency or upset provisions contained in any applicable requirement.~~

~~5. The provisions of this Subsection do not apply to acid rain emission limitations.~~

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 19:1420 (November 1993), LR 20:1375 (December 1994), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:2447 (November 2000), LR 27:2229 (December 2001), LR 28:994 (May 2002), LR 29:698 (May 2003), LR 30:1008 (May 2004), amended by the Office of Environmental Assessment, LR 31:1061 (May 2005), LR 31:1568 (July 2005), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2437 (October 2005), LR 32:808 (May 2006), LR 33:1619 (August 2007), LR 33:2083 (October 2007), LR 33:2630 (December 2007), LR 34:1391 (July 2008), LR 35:1107 (June 2009), LR 36:2272 (October 2010), LR 37:2990 (October 2011), LR 38:1229 (May 2012), amended by the Office of the Secretary, Legal Division, LR 39:1276 (May 2013), LR 40:1334 (July 2014), LR 41:1274 (July 2015), LR 42:1085 (July 2016), amended by the Office of the Secretary, Legal Affairs and Criminal Investigations Division, LR 44:746 (April 2018), LR 46:893 (July 2020), LR 47:355 (March 2021), LR 48:488 (March 2022), amended by the Office of the Secretary, Legal Affairs Division, LR 50:

**§535. Part 70 General Conditions**

A. …

| **40 CFR Part 70 General Conditions** |
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| A. — M. … |
| N. ~~If the permittee seeks to reserve a claim of an affirmative defense as provided in LAC 33:III.507.J.2, the permittee shall, in addition to complying with any emergency or upset provisions in any applicable regulation, notify the permitting authority within two working days of the time when emission limitations were exceeded due to the occurrence of an~~ *~~upset~~*~~, as defined in LAC 33:III.507.J.1. In the event of such an upset, which results in excess emissions, the permittee shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:~~Reserved.  ~~1. an upset occurred and the cause was identified;~~  ~~2. the permitted facility was being operated properly at the time;~~  ~~3. during the period of the upset, the permittee took all reasonable steps to minimize levels of emissions that exceeded the emission standard or requirement of the permit; and~~  ~~4. the permittee notified the permitting authority in accordance with LAC 33:I.Chapter 39.~~ |
| O. — W. … |

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2011, 2023, 2024, and 2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of the Secretary, Legal Affairs Division, LR 35:658 (April 2009), amended by the Office of the Secretary, Legal Affairs Division, LR 50: