Affirmative Defense Questions

The information you submitted through the State of Texas Environmental Electronic Reporting System (STEERS) for the incident identified above has been received and will be assigned to an investigator. We are providing this opportunity to submit additional information that may not have been available at the time of the final STEERS report or may contain company confidential information. All responses are due no later than 30-days after the date of this email.

If the reported incident is ongoing, please provide the estimated end date for the incident.

If you have determined that all contaminants released were below a reportable quantity, please respond with your final record as required by 30 TAC 101.201.

The questions below reflect the requirements to claim an affirmative defense for enforcement actions and are intended to assist you in gathering the information TCEQ will assess in evaluating your claim. Your responses will be evaluated against the applicable demonstration criteria in 30 TAC 101.222.

If your response includes company confidential information, please clearly indicate what you intend to keep as confidential. All confidential information will be handled in accordance with Section 382.041(a) of the Texas Health and Safety Code.

If you wish to withdraw the affirmative defense claim you made with your STEERS report, please respond to this email with that request rather than answer the questions below. If there is a different format that you'd like to use to respond to the affirmative defense questions, please respond with that.

1. What was the specific equipment or process that failed and resulted in this incident? If this incident was due to a failure of equipment at a facility that you do not own or operate, identify the name of facility that had the failure and how the failure impacted your equipment or processes.

2. Identify the best-known cause or causes of the emissions event and include all contributing factors that led to the emissions event. Discuss how the emissions event could not have been avoided by good design, maintenance, and operation practices, if applicable.

   Discuss any sudden breakdown of equipment or process that was beyond the owner/operator's control, if applicable.

3. Are there any design, maintenance or operation practices that could have been foreseen and resulted in avoiding this event? If not, how did you determine that the incident could not have been foreseen and avoided through better, technically feasible design, design, maintenance and/or operation practices?

4. How were the air pollution control equipment or processes (if any) maintained and operated in a manner consistent with good practice for minimizing emissions and reducing the number of emissions events?

5. How soon was action taken to achieve compliance once the operator knew or should have known that applicable emission limitations were being exceeded?

6. While the incident was ongoing, what steps did you take to minimize the amount and duration of the unauthorized emissions/excess opacity?

7. Discuss what monitoring systems were in place during this incident. Were they operating during the entire incident, if possible?

8. How did you document your actions in response to the incident?

9. How many reportable and recordable emissions events (including this incident) have occurred at the facility/facilities (see definition of facility in Texas Clean Air Act or 30 TAC 116.10; this is not the same as the site) involved in the emissions during this incident for the 12-month period prior to this incident?

   If any, provide a list of such incidents. What measures, if any, have already been attempted to prevent recurrence?

10. What were the facility/facilities total actual operating hours during the past 12 months?

11. Identify any information you have (e.g., complaints from neighbors, fence line monitoring, air modeling) which indicates an off-site impact. Include if any of the following impacts occurred onsite or offsite from this event: a) fatality; b) people being sent to an off-site medical facility (employee or otherwise); c) documented health impacts (e.g., eyes burning, coughing, etc.); d) fish/bird kill; and/or e) road closure or evacuation ordered by local authorities.

    Identify any information you have which indicates the unauthorized emissions caused or contributed to an exceedance of the national ambient air quality standard (NAAQS), a prevention of significant deterioration (PSD) increment, or to a condition of air pollution.

12. Provide a non-confidential process description for the facility(s) involved in the emissions event.

13. Please provide the name and contact information, including email address, for the highest-ranking individual at the plant/site.

14. In addition to the primary contact, please provide a secondary contact, including email address and title.

15. Do you have any additional information to support your claim of an affirmative defense? If so, please provide it at this time.