

### § 66.34

waived. In making such finding the Administrator shall consider whether:

(1) The violation was *de minimis* in nature and duration within the meaning of § 66.32;

(2) The air pollution control equipment, process equipment, or processes, including appropriate back-up systems, were designed, and have been maintained and operated in a manner consistent with good practice for minimizing emissions;

(3) Repair of the malfunctioning equipment was undertaken and carried out in an expeditious fashion as soon as the owner or operator knew or should have known that the malfunction existed or that applicable emission limitations were being violated or were likely to be violated;

(4) All practicable steps were taken to minimize the impact of the excess emissions (including any bypass) on ambient air quality;

(5) The excess emissions were not part of a pattern indicative of inadequate design, operation, or maintenance;

(6) Off-shift and overtime labor were utilized where necessary to ensure that repairs were made as expeditiously as possible or that emissions were minimized to the maximum extent possible; and

(7) The level of economic savings, if any, accruing to the source owner or operator was *de minimis*.

(c) Any activity that could have been foreseen, avoided or planned for, or any breakdown that could have been avoided by the exercise of reasonable diligence shall not constitute grounds for an exemption under this section. Such activities include, but are not limited to, sudden breakdowns avoidable by better maintenance procedures, phasing in and out of process equipment and routine maintenance.

(d) A hearing on any petition for an exemption based upon the unavoidable breakdown of pollution control equipment shall be informal. The hearing shall be scheduled upon notice to the public. Reasonable opportunity to testify and for submission of questions by the public to the petitioner shall be afforded. The decision of the hearing officer will be made in writing within a

### 40 CFR Ch. I (7-1-05 Edition)

reasonable period of time after the close of the hearing.

#### § 66.34 Termination of exemptions.

(a) Exemptions pursuant to § 66.31(a) (1), (2), (3), and (5) will cease to be effective upon termination or revocation of the order on which the exemption is based.

(b) Exemptions pursuant to § 66.31(a)(4) will cease to be effective when the order or decree is terminated or revoked, or the inability to comply ceases to be for reasons entirely beyond the control of the source owner or operator as defined in § 66.31(c).

(c) Exemptions granted pursuant to § 66.32 or § 66.33 shall terminate at the time specified in the exemption.

(d) The Administrator shall notify the source owner or operator, in writing, that the exemption has terminated, and shall specify the date from which the penalty shall be calculated. The notice shall be transmitted as required by § 66.12. The source owner or operator shall respond to this notice within 45 days of its receipt and in the form provided in § 66.13.

#### § 66.35 Revocation of exemptions.

(a) The Administrator may upon notice and opportunity for a hearing revoke an exemption granted to the owner or operator of any source at any time in accordance with paragraphs (b) and (c) below.

(b) An exemption may be revoked and a penalty for the period of non-exempted noncompliance assessed if:

(1) The grounds for the exemption no longer exist or never did exist, or

(2) In the case of an exemption under § 66.31, the source owner or operator has failed to comply with any interim emission control requirements or schedules of compliance (including increments of progress) contained in the extension, order, suspension or EPA-approved consent decree on which the exemption was based.

(c) The Administrator shall provide the source owner or operator written notice containing the information required by § 66.12 and a statement of the reasons for revocation. The notice shall also specify the date from which the source owner or operator must calculate a penalty. The notice shall be