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## 40 C.F.R. § 60.4861

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### How do I establish an affirmative defense for exceedance of an emission limit or standard during malfunction?

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In response to an action to enforce the numerical emission standards set forth in paragraph § 60.4845, you may assert an affirmative defense to a claim for civil penalties for exceedances of emission limits that are caused by malfunction, as defined in § 60.2. Appropriate penalties may be assessed, however, if you fail to meet your burden of proving all of the requirements in the affirmative defense. The affirmative defense shall not be available for claims for injunctive relief.

(a) To establish the affirmative defense in any action to enforce such a limit, you must timely meet the notification requirements in paragraph (b) of this section, and must prove by a preponderance of evidence that the conditions in paragraphs (a)(1) through (a)(9) of this section are met.

(1) The excess emissions meet:

(i) Were caused by a sudden, infrequent, and unavoidable failure of air pollution control and monitoring equipment, process equipment, or a process to operate in a normal or usual manner, and

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