

40 C.F.R. § 403.16

Upset provision.

- (a) *Definition.* For the purposes of this section, *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the Industrial User. An Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.
- (b) *Effect of an upset.* An Upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (c) are met.

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