

EPA Announces Changes in Enforcement and Compliance Policies as a Result of the COVID-19 Pandemic

Effective March 13, 2020, this temporary policy (COVID-19 policy) will apply to noncompliance events in lieu of an otherwise applicable EPA enforcement response policy should the noncompliance be related to COVID-19 impacts.

General Conditions

1. Regulated facilities should make every effort to comply with their environmental compliance obligations.
2. If compliance is not reasonably practicable, facilities with environmental compliance obligations should:
 - a. Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19;
 - b. Identify the specific nature and dates of the noncompliance;
 - c. Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;
 - d. Return to compliance as soon as possible; and
 - e. Document the information, action, or condition specified in a. through d.

Routine Compliance Monitoring and Reporting

If applicable permit, regulation or statute reporting is not reasonably practicable, such information should be maintained internally and made available to EPA (Regional Office, Region VII in Iowa) upon request. EPA will not seek violations for lack of applicable reporting should the cause be related to COVID-19. Submittal of late monitoring and/or reports will not be required if the reporting interval is less than 3 months. Catch-up monitoring and reporting will be required for reporting compliance intervals exceeding the 3-month threshold.

Facility Operations

The EPA expects all regulated entities to continue to manage and operate their facilities in a manner that is safe and that protects the public and the environment.

1. Facilities should contact the EPA if **facility operations impacted by the COVID-19 pandemic may create an acute risk or an imminent threat to human health or the environment**. EPA will work with the facility to minimize or prevent the acute or imminent threat to health or the environment from the COVID-19-caused noncompliance and help facilitate a return to compliance as soon as possible.

2. If a facility suffers from **failure of air emission control or wastewater or waste treatment systems or other facility equipment** that may result in exceedances of enforceable limitations on emissions to air or discharges to water, or land disposal, or other unauthorized releases, the facility should notify the EPA as quickly as possible. The EPA will evaluate whether the risk posed by the exceedance, disposal, or release is acute or may create an imminent threat to human health or the environment and will work with the facility accordingly.
3. If facility operations result in **noncompliance not already addressed by the EPA above**, regulated facilities should take the steps identified in the General Conditions above. The EPA will consider the circumstances, including the COVID-19 pandemic, when determining whether enforcement response is appropriate.
4. If a facility is a **generator of hazardous waste** and, due to disruptions caused by the COVID-19 pandemic, is unable to transfer the waste off-site within the time periods required under RCRA to maintain its generator status, the facility should continue to properly label and store such waste and take the steps identified in the General Conditions above. If these steps are met, the EPA will treat such entities to be only hazardous waste generators, and not treatment, storage and disposal (TSDF) facilities. In addition, the EPA will treat Very Small Quantity Generators and Small Quantity Generators as retaining that status, even if the amount of hazardous waste stored on site exceeds a regulatory volume threshold due to the generator's inability to arrange for shipping of hazardous waste off of the generator's site due to the COVID-19 pandemic.
5. If a facility is an **animal feeding operation**, and, due to disruptions caused by the COVID-19 pandemic, is unable to transfer animals off-site and, solely as a result of the pandemic, meets the regulatory definition of concentrated animal feeding operation (CAFO), the EPA will not treat such animal feeding operations as CAFOs (or will not treat small CAFOs as medium CAFOs, or medium CAFOs as large CAFOs). To receive this enforcement discretion an operation must take the steps identified in the General Conditions above.

Public water systems regulated under the Safe Drinking Water Act

EPA has heightened expectations for public water systems. The EPA expects operators of such systems to continue normal operations and maintenance as well as required sampling to ensure the safety of drinking water supplies. The EPA expects laboratories performing analysis for water systems to continue to provide timely analysis of samples and results.

In the event of worker shortages in the water sector, the EPA will consider continued operation of drinking water systems to be the highest priority. The EPA is working closely with federal partners, states, and other organizations to ensure resources and personnel are available to assist facilities facing staffing and contractor challenges during this period of COVID-19 response and

the Office of Water plans to launch a website with this information. Accordingly, the EPA strongly encourages public water systems to consult with the state and EPA without delay if issues arise that prevent the normal delivery of safe drinking water and encourages states to continue to work closely with the EPA on measures to address the potential impacts of COVID-19. The EPA also encourages certified drinking water laboratories to consult with the state and the EPA if issues arise that prevent laboratories from conducting analyses of drinking water contaminants.

State Oversight

The EPA will continue state program oversight, as practicable, taking into consideration priority work in response to COVID-19. Until such time as dictated by travel and social distancing restrictions, the EPA believes states should take into account the safety and health of their inspectors and facility personnel and use discretion when making decisions to conduct routine inspections.

Accidental Releases

Nothing in this temporary policy relieves any entity from the responsibility to prevent, respond to, or report accidental releases of oil, hazardous substances, hazardous chemicals, hazardous waste, and other pollutants, as required by federal law, or should be read as a willingness to exercise enforcement discretion in the wake of such a release.

This temporary policy makes EPA offices and the EPA's governmental and private sector partners, as well as the general public, aware of how the EPA intends to exercise its enforcement discretion with respect to certain compliance situations during the exigencies of the COVID-19 pandemic. This memorandum does not alter any provision of any statute or regulation that contains legally binding requirements, and it is not itself a regulation.

For additional details see:

<https://www.epa.gov/sites/production/files/2020-03/documents/oecamemoonccovid19implications.pdf>