

The COVID-19 Pandemic is Also Affecting Environmental Regulation

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The ongoing COVID-19 pandemic has caused significant disruption to our personal and business relations as we face a new reality in this unprecedented time. Social Distancing recommendations and requirements have forced many personnel to work from home, or it has caused businesses to reduce their staffing, in an effort to stop, or at least slow the spread of Coronavirus. Consequently, many businesses may be finding it difficult to meet their regulatory requirements and obligations, and environmental reporting is potentially no different. In response to the hardships businesses may be facing, federal and state governments have been relaxing regulatory requirements. The Environmental Protection Agency (EPA), cognizant of potential worker shortages due to the COVID-19 pandemic, has now gotten involved as well. On March 26th, EPA issued a [memorandum](#)¹ which temporarily relaxes certain reporting requirements in an effort to reduce the regulatory burden on industry during the pandemic.

As a result of the memo, the EPA is now exercising enforcement discretion for noncompliance on certain environmental regulations and issues. Importantly, this policy, which is retroactively effective beginning on March 13th, 2020, does not apply to any criminal violations or conditions of probation in criminal sentences. This guidance also does not apply to activities carried out under Superfund or RCRA Corrective Action enforcement measures. So whom and what are effected?

The EPA memo provides the following points of guidance to determine the general conditions of applicability:

- 1. Entities should make every effort to comply with their environmental compliance obligations.**

¹ EPA MEMORANDUM: [COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program](#); Susan Parker Bodine, March 26th, 2020.

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.

The Memo breaks down the required and permissible temporary compliance monitoring efforts based on the type of compliance monitoring that is undertaken by the entity. For example, the policy provides guidance on compliance monitoring for the following circumstances:

- 1) Routine Compliance Monitoring;
- 2) Settlement Agreement and Consent Decree Reporting Obligations and Milestones;
- 3) Facility Operations; including:
 - a) Air Emission Control Systems,
 - b) Wastewater and Waste Treatment Systems
 - c) Generators of Hazardous Waste
 - d) Animal Feeding Operations
- 4) Public water systems regulated under the Safe Drinking Water Act; and
- 5) Critical Infrastructure.

In general, the policy indicates that if a routine compliance monitoring or noncompliance reporting are not reasonably practicable due to COVID-19, then those monitoring or noncompliance reporting obligations may be waived or forgiven under certain circumstances. However, you will likely want to talk to your environmental attorney to discuss your options for your particular industry or reporting requirements. Finally, it is important to mention again that this policy is temporary, and the EPA expects full compliance after this policy is no longer in effect.

Certain environmental regulatory exceptions have also been put forth in Wisconsin at the state level, but these have been much more specific. For example, Governor Evers recent [Emergency Order #17](#), the Department of Natural Resources (DNR) is permitted to temporarily suspend the requirement for a nutrient management plan under Wis. Admin. § NR 151.07(3) for small and medium non-permitted farms who seek permission to dispose of unused milk when certain conditions have been met.

More generally, Wisconsin state parks, trails and forests remain open to the public to the public under Governor Evers's Safer at Home [Emergency Order #12](#). In addition, entrance fees are currently waived for all state park and forest lands, however, as buildings (except restrooms), towers, stairways to observation towers/areas, and playgrounds are closed; all public events are canceled; and all State campgrounds are closed through April 30, 2020.

If you have any further questions on any environmental matters, please talk to your environmental attorney to discuss your options and obligations during this unprecedented time.