



COVID-19 - CIBO

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Robin M. Ridgway – Purdue

Thomas S. Webster, III - DuPont

EPA COVID-19 Guidance



March 26, 2020 – EPA guidance on COVID-19 implications to enforcement and compliance

- Retroactive to March 13, 2020
- Guidance not just for air, but to all media
- The EPA does not expect to seek penalties for violations... in situations where the EPA agrees that COVID-19 was the cause of the noncompliance and the entity provides supporting documentation...

No Blanket Extensions

Case Specific Determinations

- Onus on facilities to document COVID-19 to be the cause of non-compliance

States may take a different approach under their own authorities

EPA COVID-19 Guidance



EPA Expects facilities to manage and operate in a safe manner that protects the public / environment

Nothing in this temporary policy:

- Relieves the responsibility to prevent, respond to, or to report accidental releases of oil, hazardous substances, hazardous waste, and other pollutants, as required by federal law.

This policy will be reviewed and updated if necessary.

7-Day notice will be provided by EPA before terminating this policy.

General Guidance



If compliance is not reasonably practicable, facilities should:

- Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19
- Identify the specific nature and dates of the noncompliance
- 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
- Return to compliance as soon as possible
- Document all of the above
- Report as per existing requirements (permits, regulations, statute)

Enforcement Discretion



Potential no penalties for the following, if COVID-19 can be proven to be the cause with supporting documentation

- Routine Compliance Monitoring (CEMs and stack tests, relative accuracy test audits, LDAR monitoring, fence line monitoring, RICE readings and monitoring, tanks and piping inspections, assessments, or stormwater inspections).
- Integrity Testing (integrity testing e.g., API 653) for compliance with certain “good” air pollution control practices.
- Sampling (effluent sampling and testing, as well as, cooling tower sampling).
- Lab analysis (laboratory holding times and turn-around times).
- Training (SPCC training, hazardous waste training, CAA section 129 renewals, and other annual re-certifications).
- Reporting

Short-term “No Action Assurance” option for facilities that are “critical infrastructure”
Case specific determinations by EPA OECA Assistant Administrator

Immediate Notifications



Contact the appropriate authority (EPA region, authorized state, or tribe) as quickly as possible if:

- Facility operations create an acute risk or imminent threat to human health or the environment.
- Failure of air emission control, wastewater or waste treatment systems, or other facility equipment results in exceedances of enforceable limitations, or unauthorized releases.
 - **Notifications must include:**
 - Pollutants involved
 - Comparison between the expected emissions or discharges, and the applicable limitations
 - Expected duration / timing of the exceedance(s)

EPA will work with states as per July 11, 2019 – Enhancing Partnerships Between EPA and States in Civil Enforcement & Compliance Assurance Work – <https://www.epa.gov/compliance/enhancing-effective-partnerships-between-epa-and-states-civil-enforcement-and-compliance>

Settlement Agreements / Consent Decrees

EPA Administrative Settlement Agreement

- If you anticipate missing enforceable milestones in an Agreement, utilize the notice procedures in the Agreement, including notifications of a force majeure event if / as applicable – which should include the March 26, 2020 policy memo as well.

Consent Decree with EPA & DOJ

- EPA & DOJ will coordinate to exercise enforcement discretion for Consent Decrees regarding stipulated penalties for routine compliance obligations
 - Utilize the notice procedures set forth in the Consent Decree, including notification of a force majeure, as applicable
 - Courts retain jurisdiction over consent decrees and may exercise their own authority

CONSULT YOUR LAWYER!



Example Practices



Certifications / Training

- Complete task using expired certifications rather than miss them altogether (Example – Opacity)
- Consider on line training

Reports

- Submit a report in a timely fashion with missing / incomplete data rather than miss the deadline altogether (Can revise report at a later time with updated data / information).

Consider advance notifications (courtesy calls) to seek inputs

Avoid creating the perception of “intentional disregard”

Don't let unavailability of personnel with signatory authority prevent you from submitting reports

- EPA has waived “wet signature” requirement as par of the temporary policy
- Email option in lieu of paper submittals
- **Check with your state/local authority as some are still requiring paper submittals**

Keep a running log of potential non-compliance events with proper documentation

Example Practices – Continued -

Affirmative Defense

- Claiming AD could potentially safeguard facility against penalties if event satisfies all of eligibility requirements

Self Disclosure Option – EPA

- Recommend consulting with legal counsel

Force Majeure / Emergency Provisions

- Review the underlying regulation to determine if you can use force majeure or emergency provisions contained within the regulation

Remember to include deviations in Semi-annual and Annual Title V Reports

- Also, there may be specific state reporting as well.

Example Practices – continued -

Proactively evaluate if a permit change is required in light of changes onsite – by the COVID-19

- Changes in raw materials due to shutdown of key supplier
- Additional storage capacity needed
 - Hauling companies impacted
 - Storing more raw materials / products on site
 - Receiving / shipping materials in a new manner
- Increase throughputs – for certain high demand products
- Portable temporary equipment
- New Processes – For example switching over to manufacture hand sanitizers, solvent wipes, or masks

COVID-19 Applicable Guidance

EPA Guidance

- Temporary policy outlining case by case discretion for non-compliance that results from the COVID-19 Pandemic – https://www.epa.gov/sites/production/files/2020-03/documents/wheeler_gov_covid-19_ow_3-27.pdf
- FAQ for Temporary Policy - <https://www.epa.gov/enforcement/frequent-questions-about-temporary-covid-19-enforcement-policy>

EPA Part 75 CEMS Guidance - <https://www.epa.gov/airmarkets/emission-monitoring-regulatory-actions>

OSHA Guidance - <https://www.osha.gov/Publications/OSHA3990.pdf>

New Approaches to Travel



Understand Expectations –

- Make contact with the party you are visiting to understand any expectations they have around interactions and requirements for entering their workplace
- Emphasize that it is wise to limit the number of participants (well below 10 if possible) for everyone's best interest

Use Technology –

- Not everyone will be immediately comfortable with in-person meetings.
- Continue to use video technology to connect visually with others until they are ready to invite you to their locations.

Prepare for Travel to Different Areas –

- Be prepared for additional COVID-related restrictions in train stations and airports at both your origin and destination
- You should expect additional travel time may be needed and plan accordingly
- Contact your travel department for information about restrictions

Take Care of Yourself



Everyone wants you to stay healthy: you, your family and your co-workers!

- Please be vigilant about self-monitoring for any symptoms with COVID-19; including monitoring your own temperature.
- If you develop symptoms consistent with COVID-19 while traveling, limit your interactions with other people and contact your manager and company health services
- **If your symptoms are severe such as:**
 - **Oral temperature over 100.5°F / 38°C**
 - **Shortness of breath**
 - **Rapid heartbeat**
 - **Bodily weakness**

Contact local emergency services for immediate attention

Staying Healthy on the Road



Face-Coverings

- There is a good chance at some point in your trip the local government will require you to wear a face-covering, such as in a food establishment or a public restroom or public elevator.
- Please prepare by making sure you have a face-covering with you at all times – Spares are a good idea!

Hand Sanitizer – Please use frequently

Avoid Handshakes – Find new and creative ways to greet others. All people should understand this.

Social Distancing – Do your best to stay a minimum of 6 ft. away from whoever you are reacting with, especially when you are having face-to-face conversations.

Personal Hygiene Behaviors –

- Cover your mouth and nose with a tissue when you cough or sneeze or use the inside of your elbow
- Throw used tissues in the trash immediately
- Avoid touching your face, if possible
- Wash your travel clothes before wearing them again
- Wash your hands frequently throughout the day for at least 20 seconds with soap and water.

Staying Healthy on the Road



Notebooks / Note-taking –

- Be aware of what you are bringing into meetings to log notes, and to ensure it is a device that can be wiped down.
- If possible, wipe it down with a sanitizing wipe after travel

Phones / Tablets –

- Wipe down you phone with a sanitizing wipe frequently.
- A good rule of thumb is to wipe your phone as you use your hand sanitizer or wash your hands

Staying Healthy on the Road



Hotel –

- Using an approved hotel will give you the best chance that precautionary and cleaning measures are robust.
- If at any point in your stay you feel health or safety precautions are insufficient, talk with the hotel management and if you are still concerned, you may stay in another hotel.
- Travelers who are uncomfortable staying away from home during this time should confine travel to day trips, until they feel comfortable

Lunches / Food –

- Until further instructed by your Line Manager, avoid in-person dining with others, unless social distancing can be practiced.
- If possible, pack lunches or snacks ahead of time to avoid unnecessary interaction with other people, while preparing food.

Vehicle –

- Clean the interior of your vehicle more frequently.
- This can be as simple as a sanitary wipe-down to eliminate the spread of germs after each use.