



Arkansas
Environmental
Federation

Industries for the Environment

Plaza West – Suite 835 – 415 North McKinley Street

Little Rock, AR 72205

Phone: 501-374-0263 Fax: 501-374-8752

www.environmentark.org

March 20, 2020

Secretary Becky Keogh
Arkansas Energy and the Environment
5301 Northshore Drive
North Little Rock, Arkansas 72118
And via electronic mail at keogh@adeq.state.ar.us

Dear Secretary Keogh,

Thank you for requesting the Arkansas Environmental Federation submit areas where regulatory relief may be necessary in order to continue daily activity of Arkansas companies and therefore the economic viability of our state during COVID-19. We thoroughly appreciate your interest in working with Arkansas's industry to promote environmental and safety as well as economic success.

Members of the Arkansas Environmental Federation (AEF) are committed to safe and environmentally responsible operation of operating sites. To protect both its employees, site contractors, and the general public, AEF seeks to temporarily limit certain on-site activities by personnel as part of the larger COVID-19 response. In order to achieve this goal, some periodic sampling, testing, recordkeeping, and reporting activities can and should be safely and responsibly deferred during the present phase of the response, to be conducted, resumed, or extended as conditions are appropriate.

The DEQ has statutory and regulatory authority to grant variances and authorizations in certain circumstances. AEF believes the vast and prolonged impact of COVID-19 on daily activities warrants DEQ utilize maximum flexibility.

Respectfully, AEF requests DEQ issue a broad no-action assurance letter and presumptively approvable variance and interim authority applications that may be retroactive. The AEF also respectfully requests DEQ to create a dedicated website and contact information for COVID-19 updates that includes the presumptive application forms on the webpage.

Set forth below is a non-exclusive list of provisions and activities identified by AEF Members for necessary relief to enable response to COVID-19. We understand that DEQ's authority cannot be extended to Federal requirements and the activities below are only identified to the extent that they are State-imposed obligations.

This list may be revised as the response develops.

- A blanket extension of 2020 deadlines for filing, reporting, recordkeeping, including those not included in this list.
 - Implement a waiver system that may extend deadlines, for reasons not limited to an employee or contractor with COVID-19 or a company's compliance with health-based recommendations forcing rescheduling.
 - This extension may also be necessary if any governmental entity imposes restrictions beyond the facility's control.
 - For air permits, the DEQ already has the authority to grant extensions. (See General Provision #24 below.)
 - 24. The permittee may request in writing and at least 15 days in advance of the deadline, an extension to any testing, compliance or other dates in this permit. No such extensions are authorized until the permittee receives written Department approval. The Department may grant such a request, at its discretion in the following circumstances:
 - a. Such an extension does not violate a federal requirement;
 - b. The permittee demonstrates the need for the extension; and
 - c. The permittee documents that all reasonable measures have been taken to meet the current deadline and documents reasons it cannot be met.
- Training or retraining deadlines waiver – WW operators, drinking water certifications, Boilers operators, Method 9 certifications, visible emissions trainings, waiver of CEU/CLE units for certifications/licensure for those who currently hold certificates/licenses.
- Continue to expeditiously review and process invoices for contractors providing services to AE&E under state contracts and who receive reimbursement for work performed as Trust Fund projects.
- Extension of time to respond to inspection reports and CAOs.
- Grant a one-time 60-day extension to all sample or test deadlines due over the next three months.
 - After 60-days, companies can make demonstrations to support other problems that necessitate extensions or delays.

- Suspend fixed period samples or test deadlines for 60 days.
 - After 60-days, companies can make demonstrations to support other problems that necessitate extensions or delays.
- Blanket reduction in sampling at state level—a 50% reduction in frequency to lessen pressure on labs and businesses. Can use predicative indicators, internal information to verify.
- For the calendar year 2020, rescind the Regulation 2, 19, 22, and 23 requirements that go beyond the federal requirements.
 - After 60-days, companies can make demonstrations to support other problems that necessitate extensions or delays.
- Flexibility for or deferred permit renewal applications for expiring permits of at least 90 days.
- Provide interim authority to construct and operate during application process.
- Appropriate flexibility with permittees that need the application process to go forward, rather than be delayed.
- Hold hearings on an electronic platform, if not possible in person, or suspend the hearing until feasible to hold the hearing.
- Implementation of Docu-sign, or similar electronic signature software, provisions for signing off on required reports and reporting leniency.
- Accept electronic signatures, hard copy mail, and proxy signatures for documents submitted to DEQ.
 - Additional 60 days to respond to anything mailed out in hard copy.
- Extension of planned rulemaking deadlines when stakeholder meetings are cancelled or postponed.
- Suspend finalizing new regulations that have gone through notice and comment due to limited time for the ability of the business to respond.
- Suspend inspections and discretionary on-site visits pending resolution of COVID-19 or for 60 days.
 - Inspectors or on-site visitors shall be subject to health screening questions, including but not limited to having temperature taken.

- An extension of 8 days for filing or providing follow up for immediately reportable events that require calculation to determine whether DEQ should be notified due to exceeding an hourly limit.
- Reasonable accommodation for missed sampling for discharge monitoring reports and extension of deadlines for DMRs to be completed and submitted with missing data.
- Extension for repair or reporting if a leak is found through LDAR before or during a time of reduced staffing.
- Maximum flexibility due to environmentally critical instruments may experience a delay in their required calibration.
- Increase of hold time for offal, end product, and other materials on site for processing and rendering facilities.
- Opacity/Visible Emissions readings – Reduce daily frequency to weekly readings for all locations where required.
- CY2019 Annual Emission Inventory (SLEIS) report required by the Office of Air Quality. Current deadline is April 30, extend by 60 days.
- Delay in the timing of required calibration of instruments (backflow prevention, wastewater flowmeter), state boiler inspections, tune-ups/NOx testing pre-ozone season.
- Suspend data collection reports and benchmarks reporting for 6 months. Not essential for compliance efforts.
- Reciprocity for the licensing of WW operators and drinking water operators
- Waiver to use a certified lab from any state
- Reduce daily cyclone, bag house, scrubber checks to weekly
- Periodic certification and reporting:
 - Deferred filing of periodic reports
 - Filing of reports without the normal signatures (where plant manager or formal designee is unavailable), unless Docusign or another similar signature software is adopted.
- Extension of 90 days for comments and response to issues with pending permits.
- Suspend state enforcement related due dates for 60-days.
 - If the suspension for state enforcement related due dates is not feasible, extend facility response requirement for 60-days.

- Extension of due dates for NPDES Permit applications.
- Relief from general stormwater permit / SWPPP inspections for construction activities.
 - Temporarily extend the 7-day frequency to 14 days and exclude the requirement of having to inspect within 24 hours of the end of a storm event of 0.25 inches or greater.
- Hazardous waste accumulation:
 - Deferral of movements past time limits, including the 3-day satellite accumulation time limit and 90-day accumulation time limit
 - Delayed reporting
- Effluent sampling and reporting:
 - Deferred sampling and WET testing
 - Deferred filing of periodic reports
 - Late lab turn-around time on sample results
 - Missed hold-time on samples
 - Delayed reporting
- Fugitive Leak Detection and Repair (LDAR):
 - Deferred LDAR monitoring
 - Late repair times
 - Late recheck of LDAR component after monitoring
 - Delayed reporting
- Soil or groundwater remediation:
 - Delayed sampling events
 - Delayed reporting
- CEMS and stack tests:
 - Late stack test
 - Late RATA test
 - Missed or late CEMS evaluation
 - Unable to repair CEMS due to the specialized knowledge vested in personnel
 - Unable to repair CEMS due to parts unavailability
 - Delayed reporting
- Cooling tower sampling:

- Delayed sampling and analysis
 - Delayed reporting
- Fenceline monitoring:
 - Unable timely to change sample tubes
 - Disruptions in lab shipments
 - Lab analytical delays
 - Delayed reporting
- Self-audits:
 - Late Disclosures of Violation and other submittals on pending audits

Our request covers only those provisions requiring activities that are inconsistent with implementation of COVID-19 response, while maintaining safe and environmentally responsible operation. Facilities will continue to comply with regulatory requirements, when practical. The Division of Environmental Quality may ordinarily require the facility to demonstrate or prove relief is necessary; however, everyone nationwide is impacted at this point and, for the next 60-days, making a demonstration unnecessary.

Respectfully,

Ava F. Roberts
Executive Director
Arkansas Environmental Federation

Copied via electronic mail and hard copy:

Governor Asa Hutchinson

Caleb Stanton, Office of Governor Asa Hutchinson, Energy and Transportation Liaison

Ken McQueen, EPA Region 6 Administrator

David W. Gray, EPA Region 6 Deputy Regional Administrator