

Division of Environmental Quality Response to letter from AEF

- 1. 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 Department of Energy and Environment (E&E) recognizes the importance of flexibility and the limitations that may be experienced by regulated entities during this public health emergency. Out of consideration for statutory authority and federal program authorization, operational concerns, and adherence to our mandate to protect the environment and public health, most accommodations will be considered on a case-by-case basis.

In many cases, existing procedures can address the needs and concerns of regulated entities. Entities should use existing procedures to submit requests for accommodations and flexibility. If no procedure exists or is unknown, requests may be sent to the Office of the Secretary at COVID19EE@adeq.state.ar.us. E&E has published a guidance document to assist with these submissions. A copy is attached and can be found here: <https://www.adeq.state.ar.us/covid-19/pdfs/Energy%20and%20Environment%20Enforcement%20Guidance.pdf>.

- 2. AEF requests DEQ issue a broad no-action assurance letter and presumptively approvable variance and interim authority applications that may be retroactive.**

DEQ has prepared provisional guidance on enforcement for issues of noncompliance that are verifiably caused by the COVID-19 public health emergency. This document, Provisional COVID-19 Enforcement Guidance, is attached and is also available at <https://www.adeq.state.ar.us/covid-19/pdfs/DEQ%20Provisional%20COVID-19%20Enforcement%20Guidance.pdf>. It is retroactive to March 17, 2020.

Entities should use existing procedures to report instances of noncompliance. If no such procedure is applicable, the entity 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 describe the decision 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; and
 - Document the information, action, or condition specified in a. through d. above and submit documentation to DEQ. Documentation should be submitted through your typical contact at DEQ. If you are unsure of where to submit, please contact COVID19EE@adeq.state.ar.us.
- 3. 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.

DEQ understands that many regulated entities will be impacted by COVID-19 and agrees that it is essential that entities continue to maintain safe and environmentally responsible operations to the best of their abilities. The Provisional COVID-19 Enforcement Guidance contains steps facilities should take when impacted by this public health emergency.

- 4. 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.**

Although the impact is nationwide and will continue to grow, Arkansas does not currently have a statewide stay-at-home and regulated entities continue to operate. It is essential that they do so in a manner that is safe and environmentally responsible, particularly facilities that impact public health. As such, documentation and justification for requests for accommodation should be provided, as described in DEQ's Provisional COVID-19 Enforcement Guidance and E&E's request submission guidance document (as described in items 1 and 2 above).

- 5. 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.**

DEQ has established <https://www.adeg.state.ar.us/covid-19/> as the landing page for COVID-19 impacts and guidance.

- 6. 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.**

A blanket extension is inconsistent with DEQ's statutory and programmatic authority and with EPA guidance as well as with our mandate to ensure essential environmental protections. DEQ is sensitive to the needs of regulated entities during this public health emergency and will make reasonable accommodations on a case-by-case basis. The DEQ Director has discretion to adjust deadlines as permitted by law. Please refer to item 1 above.

- 7. 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.**

Please refer to Emergency Order 20-137 from the Director of DEQ, Dated March 20, 2020, which extends the expiration date of DEQ-administered licenses that expire before July 1, 2020 by an additional six (6) months. This Emergency Order is attached and available at https://www.adeg.state.ar.us/home/hot_topics/pdfs/EO_20-137.pdf. Other requests for accommodation will be considered on a case-by-case basis, as described in item 1 above.

For Method 9 certification and visible emissions trainings required by permit, OAQ intends to exercise enforcement discretion on a case-by-case basis, where appropriate, if maintenance of a Method 9 certification is not practicable due to reasons verifiably caused by COVID-19.

Drinking water is managed through the Arkansas Department of Health (ADH).

Boiler operators are licensed through the Arkansas Department of Labor and Licensing.

8. 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.

Secretary Keogh directed E&E staff to begin working remotely effective March 23, 2020. E&E is prepared for this type of remote work and is equipped to uphold our mission to protect the state's health and environment through regulatory programs, essential department functions, and emergency response efforts. This includes timely processing of invoices for our contractors and Trust Fund reimbursements.

9. Extension of time to respond to inspection reports and CAOs.

DEQ has the ability to extend time for responding to inspection reports and CAOs on a case-by-case basis. See item 1 above.

10. Grant a one-time 60-day extension to all sample or test deadlines due over the next three months.

A blanket extension is inconsistent with DEQ's statutory and programmatic authority and with EPA guidance, as well as with our mandate to ensure essential environmental protections. DEQ will grant requests to extend sampling and testing requirements on a case-by-case basis, under existing legal authority. The applicant should provide the information necessary to grant the extension including the affected source, what testing is required, and when the testing would otherwise be due. The request should be submitted through your typical process or channel at DEQ. If you are unsure who to contact, follow the E&E request submission guidance document (as located in item 1 above) and submit to COVID19EE@adeq.state.ar.us.

- **After 60-days, companies can make demonstrations to support other problems that necessitate extensions or delays.**

DEQ will consider further extensions on a case-by-case basis.

11. 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.**

Please see items 1 and 10 above.

12. Blanket reduction in sampling at state level-a 50% reduction in frequency to lesson pressure on labs and businesses. Can use predicative indicators, internal information to verify.

Please see items 1 and 10 above.

13. For the calendar year 2020, rescind the Regulation 2, 19, 22, and 23 requirements that go beyond the federal requirements.

Rescinding these requirements would require rulemaking by the Arkansas Pollution Control and Ecology Commission (APC&EC), revisions to Arkansas state statutes, and a submittal to the EPA to review and reauthorize our federally-delegated programs. For example, once Rule 2 provisions are approved by the EPA, they become federal requirements that are enforceable under the Clean Water Act. DEQ may grant temporary variances from requirements as permitted by law.

14. Flexibility for or deferred permit renewal applications for expiring permits of at least 90 days.

DEQ will consider these requests on a case-by-case basis under existing legal mechanisms, including permit flexibility provisions, variance requests, and interim authority requests.

OLR suggests that permittees request a permit application submittal extension, for review and consideration, prior to their 180-day deadline.

For air permits, the permit application shield will not apply for any application submitted less than six (6) months prior to the expiration date of the permit.

National Pollutant Discharge Elimination System (NPDES) permit renewal applications are due 180 days before the expiration of the permit and must be administratively complete. When permittees miss the 180-day deadline, OWQ issues a CAO to allow the existing permit to remain in effect until a renewal is issued. If a permittee demonstrates that they are unable to meet this deadline due to COVID-19, OWQ may use enforcement discretion to waive or reduce the penalty associated with the CAO, pursuant to DEQ's Provisional COVID-19 Enforcement Guidance. If a permittee cannot submit the requisite sampling data with an otherwise complete application, and they provide documentation that this deficiency is caused by COVID-19, OWQ may reissue the permit with a condition to provide the necessary sampling results within a specified timeframe.

15. Provide interim authority to construct and operate during application process.

DEQ will consider these requests consistent with the requirements in Ark. Code Ann § 8-4-230. It should be noted in the request if COVID-19 is applicable.

16. Appropriate flexibility with permittees that need the application process to go forward, rather than be delayed.

DEQ will work with permittees and understands the need for the permit process to continue.

17. Hold hearings on an electronic platform, if not possible in person, or suspend the hearing until feasible to hold the hearing.

DEQ will consider these requests on a case-by-case basis, in a manner consistent with our statutory and regulatory authority and with guidance from the Arkansas Department of Health on public gatherings.

18. 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.

DEQ understands the importance of electronic submissions and signatures during this public health emergency and already has systems in place. DEQ will continue to accept hard copy mail and will work with individual entities, as permitted by legal authority, to facilitate submission of documents.

OLR will accept electronic signatures consistent with applicable regulations.

Generally for air permitting, OAQ already provides for electronic submission and processing with electronic signatures via ePortal. If it is necessary for air emissions inventory or permit applications not submitted by a Responsible Official, OAQ will accept an email certification from a Responsible Official, to be followed up with a hardcopy wet signature from a Responsible Office as soon as practicable. For State and Local Emissions Inventory System (SLEIS) submissions, the hardcopy wet signature shall be provided no later than the deadline for final facility submission into SLEIS later this year.

OWQ uses ePortal for the submission of NPDES permits and accepts email applications for other types of permits. These documents are submitted electronically so do not require “wet” signatures.

Please also refer to DEQ’s Provisional COVID-19 Enforcement Guidance, which states, “If a submission to DEQ requires a “wet” signature of a responsible official or cognizant official, DEQ will accept a digital or other electronic signature. The mere inability to obtain a “wet” signature will not be considered a justification for failure to make a paper submission or certification. For enforcement purposes, DEQ also will accept electronic submissions even if a paper original is required.”

19. Additional 60 days to respond to anything mailed out in hard copy.

Any requests for extensions not addressed in this letter or the DEQ Provisional COVID-19 Enforcement Guidance will be handled on a case-by-case basis.

20. Extension of planned rulemaking deadlines when stakeholder meetings are cancelled or postponed.

DEQ is sensitive to this request and will proceed on a case-by-case basis, in a manner consistent with our statutory and regulatory authority and obligations. Stakeholders will be kept informed throughout the process.

OAQ is extending the April 6, 2020 deadline for feedback on the Regulatory Efficiency and Streamlining effort strawman drafts of Rules 18, 19, and 26 to April 21, 2020. Future deadline extension requests will be considered on a case-by-case basis.

The Regulation 27 stakeholder meeting will be postponed until the SWANA Annual Conference September 3, 2020.

21. Suspend finalizing new regulations that have gone through notice and comment due to limited time for the ability of the business to respond.

If a rule has completed public notice and comment period, there remains nothing to respond to except a potential appeal. DEQ is sensitive to requests for input on the rulemaking process and will proceed on a case-by-case basis, in a manner consistent with our statutory and regulatory authority and obligations.

22. Suspend inspections and discretionary on-site visits pending resolution of COVID-19 or for 60 days.

Inspections are being evaluated on a case-by-case basis. DEQ offices are reducing the number of non-time sensitive routine inspections that require face-to-face interactions with facility personnel. However, it is essential to continue inspections necessary to protect the environment and ensure public health and welfare. In particular, ensuring safe and operational drinking water and wastewater services is critical to containing COVID-19. Additionally, monitoring air quality is important during this time of concern surrounding the respiratory impacts related to COVID-19. Requests for accommodation should be submitted as described in item 1 above.

- **Inspectors or on-site visitors shall be subject to health screening questions, including but not limited to having temperature taken.**

Facilities can require visitors to have their temperature taken by thermal scan before entering the site. Facilities cannot demand any kind of health screening that would be an invasion of privacy of the person entering or that would require the person entering to divulge medical information that would be protected under the Health Insurance Portability and Accountability Act (HIPAA). While DEQ is cognizant of the importance of protecting the health of personnel at regulated facilities, as well as the health of DEQ employees, DEQ retains the authority to inspect permitted entities by statute. Generally, DEQ permits have provisions allowing inspections and right of entry.

23. 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.

Requests for accommodation and instances of noncompliance will be considered on a case-by-case basis, as described in items 1 and 2 above.

24. Reasonable accommodation for missed sampling for discharge monitoring reports and extension of deadlines for DMRs to be completed and submitted with missing data.

Requests for accommodation and instances of noncompliance will be considered on a case-by-case basis, as described in items 1 and 2 above.

No Data Indicator (NODI) Code Z should be used for Discharge Monitoring Reports (DMR) that are noncompliant due to COVID-19. In this circumstance, permittees should submit a report documenting COVID-19 as the cause of noncompliance and follow the instructions provided in the DEQ Provisional COVID-19 Enforcement Guidance (see item 2 above).

25. Extension for repair or reporting if a leak is found through LDAR before or during a time of reduced staffing.

Requests for accommodation will be considered on a case-by case basis. Please see items 1 and 10 above.

26. Maximum flexibility due to environmentally critical instruments may experience a delay in their required calibration.

Requests for accommodation will be considered on a case-by-case basis. Please see item 1 above.

27. Increase of hold time for offal, end product, and other materials on site for processing and rendering facilities.

OWQ does not have holding times for raw product processing. These materials should be protected from run-on, run-off, and stormwater exposure or have a stormwater Industrial General Permit. If they become odiferous it may become a local nuisance issue.

28. Opacity/Visible Emissions readings - Reduce daily frequency to weekly readings for all locations where required.

Requests for a reduction in opacity readings will be considered on a case-by-case basis. Please see item 1 above.

29. CY2019 Annual Emission Inventory (SLEIS) report required by the Office of Air Quality. Current deadline is April 30, extend by 60 days.

An existing process is in place that provides for extensions on a case-by-case basis.

30. Delay in the timing of required calibration of instruments (backflow prevention, wastewater flowmeter), state boiler inspections, tune-ups/NOx testing pre-ozone season.

Requests for accommodation will be considered on a case-by-case basis. Please see items 1, 2, and 10 above.

Boiler inspections are regulated by the Arkansas Department of Labor and Licensing.

Backflow prevention is largely an Arkansas Department of Health issue. If wastewater flow meter calibration cannot be conducted, the permittee should request OWQ to allow an alternative method to calculate or estimate flow volume.

31. Suspend data collection reports and benchmarks reporting for 6 months. Not essential for compliance efforts.

Requests for accommodations will be considered on a case-by-case basis. Please see item 1 above.

32. Reciprocity for the licensing of WW operators and drinking water operators

DEQ has existing processes in place for licensing reciprocity that should be followed. Additional requests for accommodation will be considered on a case-by-case basis.

Drinking water is managed through the Arkansas Department of Health.

33. Waiver to use a certified lab from any state

DEQ accredits many labs in other states. Labs accredited through DEQ must be used if data is to be submitted to DEQ. Accredited laboratories can be located on DEQ's website at: https://www.adeg.state.ar.us/techsvs/lab_cert/labcert.aspx.

Reg. 12.312(G)(8) requires use of an AR-certified lab if Petroleum Storage Tank Trust Fund reimbursement is anticipated.

34. Reduce daily cyclone, bag house, scrubber checks to weekly

Requests for accommodations will be considered on a case-by-case basis. Please see item 1 above.

35. 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.**

Please see items 1 and 18 above.

36. Extension of 90 days for comments and response to issues with pending permits.

Extending the period for comments and responses to issues with pending permits will be considered on a case-by-case basis.

37. 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.**

Requests for accommodations will be considered on a case-by-case basis. Please see item 1 above.

38. Extension of due dates for NPDES Permit applications

Please see item 14 above for information on expiring permits. For new permits, there is a 180-day deadline before discharge can commence. The 180-day deadline for expiring and new permits is both regulatory and statutory and is set by federal law.

39. 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.**

There are two inspection frequency conditions referenced in the CSWGP and the scheduled must be specified in the SWPPP: a) At least once every 7 calendar days, or b) At least once every 14 calendar days and within 24 hours of the end of a storm event of 0.25 inches or greater (a rain gauge must be maintained onsite). If construction is ongoing, there are personnel onsite. If “earth disturbing” activities have ceased, a period of less than 14 calendar days is allowed before stabilization must occur. If the stabilization cannot occur within the specified time, this must be documented through the inspection requirements of the SWPPP. Documentation must include the reasons for the ongoing delay and include updated plans and schedules as well as plans for activities at the site necessary to resume compliance. For issues of noncompliance, please refer to item 2 above and DEQ’s Provisional COVID-19 Enforcement Guidance.

40. 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**

If a facility is operational and accumulating hazardous waste, they should follow their permit and operating procedures to ensure the safe management of hazardous waste. Once a satellite container is full, it should be moved within three days to the <90 or <180-day accumulation area, as designated by the permit. OLR will consider, on a case-by-case basis, requests to extend accumulation time limits on <90 or <180-day accumulation areas if that deadline is prior to April 30, 2020 and is verifiably justified by the COVID-19 public health emergency.

41. 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**

Requests for accommodation will be considered on a case-by case basis. Please see items 1, 2, and 10 above.

No Data Indicator (NODI) Code Z should be used for Discharge Monitoring Reports (DMR) that are noncompliant due to COVID-19. In this circumstance, permittees should submit a report documenting COVID-19 as the cause of noncompliance and follow the instructions provided in the DEQ Provisional COVID-19 Enforcement Guidance.

42. Fugitive Leak Detection and Repair (LDAR):

- **Deferred LDAR monitoring**
- **Late repair times**
- **Late recheck of LDAR component after monitoring**
- **Delayed reporting**

Requests for accommodation will be considered on a case-by case basis. Please see item 1 above.

43. Soil or groundwater remediation:

- **Delayed sampling events**
- **Delayed reporting**

Requests for accommodation will be considered on a case-by case basis, as allowed under regulatory authority and existing enforceable agreements. Please see items 1 and 10 above. Please also note that the enforcement discretion described in the DEQ Provisional COVID-19 Enforcement Guidance does not apply to activities that are carried out under Superfund and Resource Conservation and Recovery Act (RCRA) Corrective Action enforcement instruments.

44. 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**

Accommodations for stack tests, RATA tests, and CEMS evaluation, repair, and reporting will be considered on a case-by-case basis. Please see items 1 and 10 above.

45. Cooling tower sampling:

- **Delayed sampling and analysis**
- **Delayed reporting**

Requests for accommodation will be considered on a case-by case basis. Please see item 1 above.

46. Fenceline monitoring:

- **Unable timely to change sample tubes**
- **Disruptions in lab shipments**
- **Lab analytical delays**
- **Delayed reporting**

Requests for accommodation will be considered on a case-by case basis. Please see items 1 and 2 above.

47. Self-audits:

- **Late Disclosures of Violation and other submittals on pending audits**

Requests for accommodation will be considered on a case-by case basis. Please see items 1 and 2 above.