

Four Steps to Managing Environmental Regulatory Compliance During and After the COVID-19 Pandemic

SCS ENGINEERS

By Cheryl Moran, SCS Engineers

The COVID-19 pandemic has caused disruptions to our lives and our businesses. The Environmental Protection Agency (EPA), as well as individual state environmental regulatory agencies are addressing potential unavoidable compliance gaps with discretionary enforcement policies. This does not mean environmental regulations have been suspended or excused in any manner. Regulated entities should make every effort to remain in compliance with all regulations and permit conditions. Regulators are offering some regulatory flexibility on a case-by-case basis for special situations that are unavoidable and, most importantly, do not pose a risk to human health or the environment. If you find that your business has been unable to remain in compliance, follow these four steps.

The first step is to identify potential future or past non-compliance resulting from the pandemic, then documenting the specific nature of the non-compliance and how COVID-19 played a role in creating the non-compliance issue. If the non-compliance is something that you anticipate will happen in the future, contact the appropriate agency in advance to discuss the situation.

The second step is to determine which agency has jurisdiction for the specific program or permit.

EPA has the ultimate jurisdiction for Regulations that are written into Title 40 of the Code of Federal Regulations, the Clean Air Act, Clean Water Act (including Spill Prevention, Control, and Countermeasure), Emergency Planning and Community Right-to-Know Act (EPCRA), and the Resource Conservation and Recovery Act (RCRA). This includes Title V air permits, National Emission Standards for Hazardous Air Pollutants (NESHAP), and New Source Performance Standards (NSPS), to name a few.

States manage programs that are often outside of EPA's scope. For instance, Wisconsin Department of Natural Resources (DNR) is the authority for State Operating Permits (SOP), Registration and Operation Permits (ROP).

EPA and state agencies may have dual jurisdiction in some situations. For example, if you hold a Title V air operating permit, the permit was issued by Wisconsin DNR after review by the EPA. Both agencies therefore have the authority to enforce the permit conditions.

Most states have hazardous waste programs that are authorized by the EPA, yet EPA only requires large quantity generators to submit a hazardous waste report every other year. Wisconsin DNR requires annual hazardous waste reports by both large and small quantity generators. Those reports which are required only by the state and not by the EPA are only enforceable by Wisconsin DNR, while the biennial waste report is enforceable by both agencies.

The third step is to review the discretionary enforcement documents that have been released by the agencies.

EPA

EPA released a memorandum on March 26, 2020. This is a temporary policy Retroactive to March 13, 2020. The memo covers activities including, but not limited to routine compliance monitoring, integrity testing, laboratory analysis, training, and reporting. EPA will try to coordinate with state, tribal, and local regulatory entities in situations where EPA shares jurisdiction over compliance obligations. The EPA memo DOESN'T cover criminal violations or activities carried out under Superfund or RCRA corrective action enforcement.


EPA will give 7 days' advance notice prior to terminating at this web page: <https://www.epa.gov/enforcement/covid-19-implications-epas-enforcement-and-compliance-assurance-program>. After the memo is terminated, you are expected to return to compliance. EPA will not require facilities to "catch up" with missed monitoring or reporting if interval is less than three months. If you were unable to meet monitoring or reporting obligations, be sure to include the reason for the gap in the next submittal.

Wisconsin

Wisconsin Department of Natural Resources has developed a Compliance Roadmap.



COVID-19 ENVIRONMENTAL COMPLIANCE PROCESS




If you foresee COVID-19 posing a POTENTIAL COMPLIANCE ISSUE at your site or facility, follow these steps to request special DNR assistance.

EMERGENCIES


Contact the DNR immediately if there is an **imminent or actual danger or threat** to human health or the environment.
Call 1-800-943-0003 • select #1

As part of DNR's response, staff will initiate a request for compliance assistance, where applicable, once the threat is addressed.




NON-EMERGENCIES

If there is no threat or danger, request Pre-Approval for Compliance Assistance:

FIRST Email DNR point-of-contact to submit a request. 

IF If a confirmed DNR contact is not established...

THEN Submit DNR's online form: www.surveymonkey.com/r/WDNRCmplAssist 


The DNR will evaluate requests on a case-by-case basis.

The DNR will work as quickly as possible on a solution in response to the compliance assistance request.
Do not implement alternative methods until receiving DNR written approval.

Emergencies are to be reported immediately by calling the emergency hotline in the event of a situation that poses a threat to human health or the environment. For non-emergencies, you are expected to first attempt to email your primary point of contact for the related program. If you do not have a contact, the DNR has an online form to complete and submit. Details and links to pertinent resources are available at this site: <https://dnr.wi.gov/news/releases/article/?id=5080>

The fourth step is to return to compliance as soon as possible.

Policies may be updated or terminated at any time, so be sure to visit the appropriate websites regularly. By working side-by-side with regulatory agencies, we can minimize the risks to human health and the environment while managing to keep ourselves and our coworkers safe.

If you need help navigating discretionary enforcement, contact Cheryl Moran (cmoran@scsengineers.com) in Milwaukee, WI; or Mark Hammers (mhammers@scsengineers.com) in Madison, WI. Cheryl Moran is a Project Manager at SCS Engineers with more than 25 years of experience in the environmental regulatory compliance. She is a Certified Hazardous Materials Manager (CHMM) and works with air, water, and waste management; EPCRA; environmental compliance audits; and sustainability programs. 

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Contact Tony Kollasch
 608-216-7381
tkollasch@scsengineers.com
www.scsengineers.com

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