

**Arizona Department of Environmental Quality (ADEQ)**  
**Memorandum of Compliance and Enforcement Implementation during COVID-19**  
**March 31, 2020**

- The ADEQ approach to compliance management has historically focused on compliance assistance and informal enforcement, reserving escalated enforcement and penalties for only the most severe non-compliance.
- On March 26, 2020, the Arizona Governor issued Executive Order 2020-17: Continuity of Work
- On March 26, 2020, the United States Environmental Protection Agency (EPA) issued a memorandum: COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program.
- This table explains ADEQ’s use of compliance and enforcement discretion to implement relief measures for the regulated community in light of COVID-19, Executive Order 2020-17, and EPA’s March 26, 2020 memorandum.

<b>Issue</b>	<b>EPA Memorandum</b>	<b>ADEQ Implementation</b>
<b>General Conditions for Non-compliance Caused by COVID-19</b>	<ul style="list-style-type: none"> <li>-Facilities should make every effort to comply with environmental regulations.</li> <li>-If compliance not reasonably practicable (1) minimize effects and duration; (2) identify the specific nature and dates of noncompliance; (3) identify how COVID-19 was the cause and the actions taken in response, including best efforts to comply and steps taken to return to compliance ASAP; (4) return to compliance ASAP; (5) document the information, action or condition specified in 1-4.</li> </ul>	<ul style="list-style-type: none"> <li>-Consistent with ADEQ’s compliance management approach. ADEQ will add a requirement for documentation regarding COVID-19 to each informal notice.</li> </ul>
<b>Routine Compliance Monitoring and Reporting</b>	<ul style="list-style-type: none"> <li>-Use existing procedures to report noncompliance; or if none or not practicable, maintain information and make available upon request.</li> <li>-No “catch-up” reporting required if underlying requirement has intervals of less than 3 months.</li> <li>-Other monitoring such as bi-annual or annual should resume ASAP, including conducting late monitoring or submitting late reports.</li> <li>-Facilities should use reporting sections or codes on forms to indicate why sampling/monitoring is not conducted</li> </ul>	<ul style="list-style-type: none"> <li>-Consistent with ADEQ’s compliance management approach. ADEQ will add a requirement for documentation regarding COVID-19 to each informal notice.</li> <li>-ADEQ will accept emailed submissions in lieu of original documents if a facility is unable to provide an original.</li> <li>-ADEQ will accept electronic and scanned signatures for submitted documents.</li> </ul>

	-Emailed submissions allowed even if original is normally required.	
<b>Enforcement and Penalties for Compliance Monitoring and Reporting</b>	-EPA does not expect to seek penalties for violations of routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification obligations, where EPA agrees COVID-19 was the cause and the entity has supporting documentation.	-Consistent with ADEQ’s compliance management approach. ADEQ will add a requirement for documentation regarding COVID-19 to each informal notice. -ADEQ will continue to provide inspection reports and informal notices that detail deficiencies needing correction.
<b>Operator Certifications</b>	-Certified operators should maintain certifications, but if not practicable, keep experienced operators on the job even if a training or certification is missed.	-ADEQ will implement Executive Order 2020-17, which provides 6 months of deferment for required certification renewals, training, exams, and professional development hours (PDHs). -ADEQ understands that the availability of online courses does not necessitate PDHs if staffing is limited. -ADEQ encourages facilities to keep experienced operators on the job, even when normal certification requirements may not be met.
<b>Enforcement and Penalties for Settlement Agreements</b>	-Use force majeure provisions and notice provisions in agreements when compliance is affected by COVID-19. -Treat agreement compliance monitoring, sampling, lab, training, certifications, and reporting similar to routine compliance monitoring and reporting protocol above. -No stipulated or other penalties for non-compliance with routine agreement obligations such as those listed above, when caused by COVID-19.	-Consistent with ADEQ’s compliance management approach. -ADEQ will work with facilities to amend agreement schedules when appropriate.
<b>Facility Operations</b>	-Expectation of continued facility operation that is safe and protects the public and the environment. -If operations create an acute risk or imminent threat to human health or the environment, the facility should notify EPA.	-Consistent with ADEQ’s expectations of emitting/discharging facilities and ADEQ’s compliance management approach.

	<ul style="list-style-type: none"> <li>-For exceedances of limitations to air emissions or discharges to water, land disposal or other releases, notify EPA or state/tribe as soon as possible of: pollutant emitted or discharged; comparison between expected emission or discharge and limitation; expected duration and timing of exceedances or releases.</li> </ul>	<ul style="list-style-type: none"> <li>- Permit exceedances that do not pose an acute risk to human health or the environment generally will be addressed through informal enforcement.</li> </ul>
<b>Hazardous Waste</b>	<ul style="list-style-type: none"> <li>-If a generator of hazardous waste is unable to transfer waste, store and label, provide notice to EPA, and take steps consistent with general conditions above.</li> <li>-If the above steps are followed, EPA will treat the facility as a generator not a TSD facility, and very small and small generators will retain status.</li> </ul>	<ul style="list-style-type: none"> <li>-ADEQ will align its compliance management approach with EPA.</li> <li>-ADEQ will add a requirement for documentation regarding COVID-19 to each informal notice.</li> </ul>
<b>Animal Feeding Operations</b>	<ul style="list-style-type: none"> <li>-If an operation is unable to transfer animals off-site, the operation will not be treated as a Concentrated Animal Feeding Operation (CAFO) or change its existing size status, as long as general conditions above are met.</li> </ul>	<ul style="list-style-type: none"> <li>-Consistent with ADEQs compliance management approach. ADEQ will add a requirement for documentation regarding COVID-19 to each informal notice.</li> </ul>
<b>Public Water Systems (PWS) Regulated under the Safe Drinking Water Act (SDWA)</b>	<ul style="list-style-type: none"> <li>-Heightened expectations for public water systems.</li> <li>-Continue normal operations, maintenance and sampling.</li> <li>-If there are worker or lab shortages, the highest priority is monitoring required under the National Primary Drinking Water regulations to protect against microbial pathogens.</li> <li>-Additional priorities are nitrate/nitrite and lead and copper rule monitoring, followed by contaminants for which the system has been non-compliant.</li> <li>-PWS and labs should consult with states immediately if issues arise with delivering safe drinking water and conducting analyses of contaminants.</li> <li>-EPA will consider circumstances when deciding on enforcement response.</li> </ul>	<ul style="list-style-type: none"> <li>-Consistent with ADEQs expectations of public water systems and ADEQ's compliance management approach.</li> </ul>
<b>Critical Infrastructure</b>	<ul style="list-style-type: none"> <li>-For essential critical infrastructure, EPA may consider a short-term No Action Assurance on a case-by-case basis, with conditions to protect the public, if it is in the public interest.</li> <li>-Essential critical infrastructure is determined by the Cybersecurity and Infrastructure Security Agency</li> </ul>	<ul style="list-style-type: none"> <li>-ADEQ will address any conditions regarding critical infrastructure on a case-by-case basis.</li> </ul>

<b>Inspections</b>	-EPA believes states should use discretion when deciding to conduct routine inspections, to account for safety and health of inspectors and facility personnel.	-Inspections will be prioritized based on citizen complaints, known or imminent threats to human health or the environment, and by risk and compliance history. -Inspectors will adhere to CDC and ADHS recommendations including physical distancing, will minimize interaction with facility personnel, and will accommodate whenever practicable, facility specific concerns.
<b>Accidental Releases</b>	-All entities maintain a responsibility to prevent, respond to, and report releases of oil, hazardous substances, hazardous chemicals, hazardous waste or other pollutants as required by law. -No enforcement discretion will be applied with regard to accidental release responsibility.	-Consistent with ADEQ's expectations of regulated facilities.
<b>Criminal Violations</b>	-Criminal penalties are reserved for violations that are the result of an intentional disregard for the law.	-Consistent with ADEQ's approach.
<p>ADEQ's informal enforcement includes notices of opportunities to correct and notices of violation. During this time of emergency and consistent with ADEQ's compliance management approach, every compliance issue will be documented. In the vast majority of cases documenting will occur in the inspection report, by facility self-reporting, and/or in the notice of opportunity to correct. In cases of compliance issues that create impacts or imminent threats to human health or the environment, notices of violation will be issued with leadership approval. Formal enforcement and penalties will be reserved for the most severe non-compliance. Existing informal and formal enforcement compliance schedules remain in effect.</p>		

GOVERNOR DOUGLAS A. DUCEY

STATE OF ARIZONA



EXECUTIVE ORDER

Executive Order 2020-18

**Stay Home, Stay Healthy, Stay Connected**  
*Physical Distancing to Mitigate COVID-19 Transmission*

**WHEREAS**, Arizona is committed to combating COVID-19, which represents a serious threat to public health; and

**WHEREAS**, the State of Arizona has taken proactive actions to mitigate the risk of COVID-19 to public health and address the economic impact of the COVID-19 pandemic; and

**WHEREAS**, on March 11, 2020, pursuant to A.R.S. §§ 26-303 and 36-787, I, as Governor of the State of Arizona, issued a declaration of a Public Health State of Emergency due to the necessity to prepare for, prevent, respond to, and mitigate the spread of COVID-19; and

**WHEREAS**, on March 15, 2020, a statewide school closure was issued in coordination with Superintendent of Public Instruction Kathy Hoffman, later extended on March 30, 2020, through the end of the school year; and

**WHEREAS**, many businesses have greatly reduced their hours and operations as directed by health officials and in an effort to protect the public health and slow the spread of COVID-19; and

**WHEREAS**, on March 17, 2020, following updated guidance from the Centers for Disease Control and Prevention (CDC), the Arizona Department of Health Services (ADHS) issued updated guidance that included canceling or postponing gatherings of 10 or more people, recommending telework and other alternatives, restricting access to nursing homes, retirement homes and long-term care facilities to provide critical assistance, and providing recommendations to restaurants and eating establishments to mitigate the risk of COVID-19 transmission; and

**WHEREAS**, on March 19, 2020, Executive Order 2020-09 was issued requiring restaurants in Arizona counties with confirmed COVID-19 cases to provide dine-out options only and required all bars, gyms and movie theaters in those counties to close; and

**WHEREAS**, on March 19, 2020, Executive Order 2020-10 halted all elective surgeries in the State of Arizona to free up medical resources and maintain the capacity for hospitals and providers to continue offering vital services; and

**WHEREAS**, essential services were identified in Executive Order 2020-12 as those specifically necessary to promote the public health, safety and welfare of the state or assist others in fulfilling such functions; and

**WHEREAS**, to combat COVID-19, and at the recommendation of the state’s health officials, the State of Arizona must continue its efforts by further limiting potential exposure through a policy of physical distancing while maintaining social connectedness; and

**WHEREAS**, pursuant to A.R.S. §§ 26-303(E), the Governor of Arizona, after a Declaration is issued, has “the right to exercise, within the area designated, all police power vested in the state by the constitution and laws of this state”; and

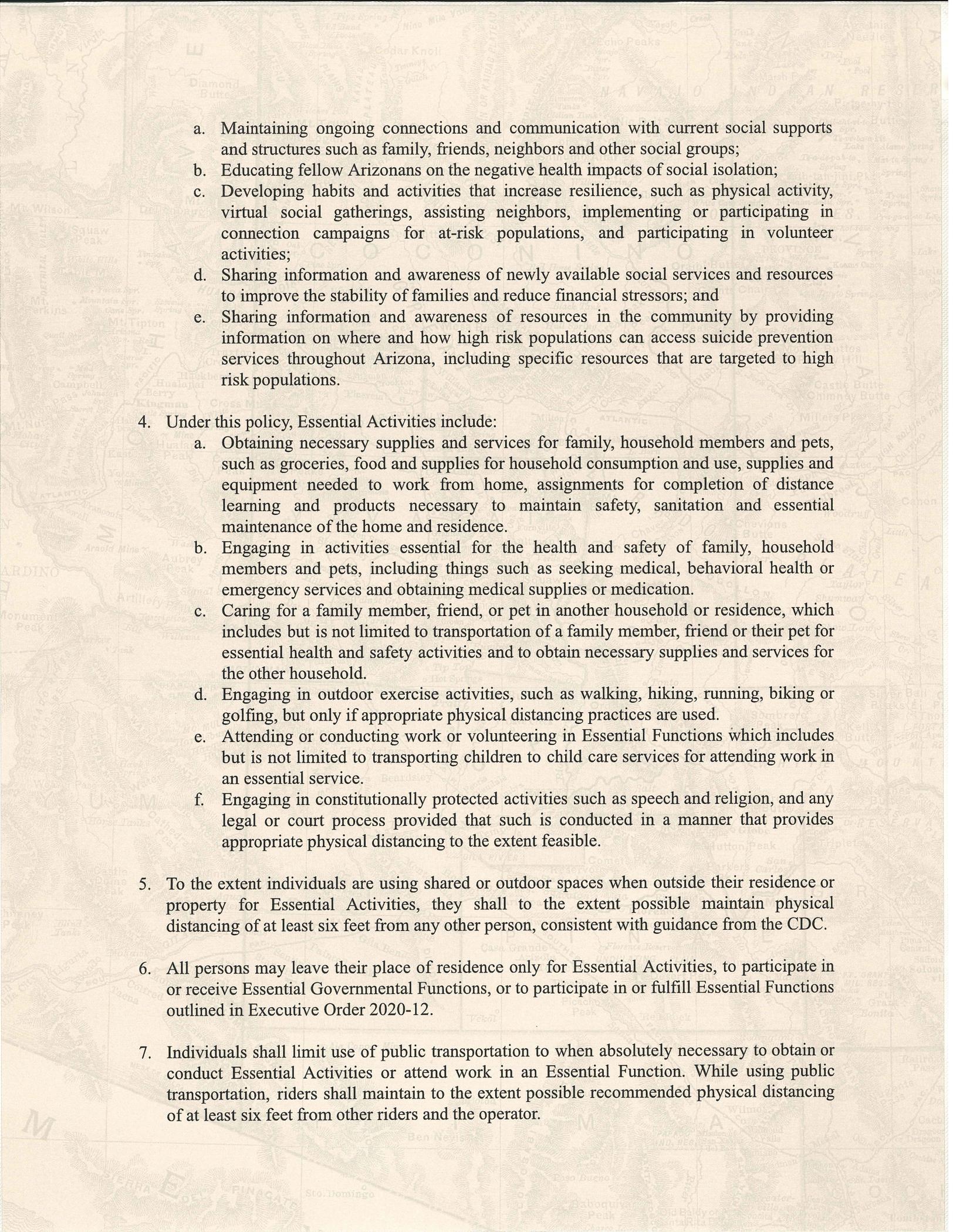
**WHEREAS**, pursuant to A.R.S. § 36-787(A), during a State of Emergency declared by the Governor, the Arizona Department of Health Services has primary jurisdiction, responsibility and authority for:

- (1) Planning and executing public health emergency assessment, mitigation, preparedness response and recovery of the State;
- (2) Coordinating public health emergency response among State, local and tribal authorities;
- (3) Collaborating with relevant federal government authorities, elected officials or other states, private organizations and private sector companies; and
- (4) Coordinating recovery operations and mitigation initiatives subsequent to public health emergencies; and

**WHEREAS**, on March 30, 2020, the Director of the Arizona Department of Health Services, based on an epidemiological assessment of Arizona specific data and in alignment with CDC guidance, recommended the state implement enhanced mitigation strategies.

**NOW, THEREFORE, I**, Douglas A. Ducey, Governor of the State of Arizona, by virtue of the authority vested in me by the Constitution and laws of the State, including but not limited to A.R.S. § 26-303 and after consultation with the Director of the Arizona Department of Health Services, do hereby order, effective at 5:00 p.m. on March 31, 2020:

1. Arizona shall institute a “Stay home, Stay healthy, Stay connected” policy that promotes physical distancing, while also encouraging social connectedness. This builds on actions the state has already taken, and further memorializes some already in effect, to slow the spread of COVID-19 and protect our citizens.
2. Under this policy, all individuals in the State of Arizona shall limit their time away from their place of residence or property, except:
  - a. To conduct or participate in Essential Activities.
  - b. For employment, to volunteer or participate in Essential Functions.
  - c. To utilize any services or products provided by Essential Businesses.
  - d. Employment, if as a sole proprietor or family owned business, work is conducted in a separate office space from your home and the business is not open to serve the public.
  - e. No person shall be required to provide documentation or proof of their activities to justify their activities under this order.
3. Arizonans are encouraged to improve social connectedness, resiliency, and help-seeking behavior by:

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- a. Maintaining ongoing connections and communication with current social supports and structures such as family, friends, neighbors and other social groups;
  - b. Educating fellow Arizonans on the negative health impacts of social isolation;
  - c. Developing habits and activities that increase resilience, such as physical activity, virtual social gatherings, assisting neighbors, implementing or participating in connection campaigns for at-risk populations, and participating in volunteer activities;
  - d. Sharing information and awareness of newly available social services and resources to improve the stability of families and reduce financial stressors; and
  - e. Sharing information and awareness of resources in the community by providing information on where and how high risk populations can access suicide prevention services throughout Arizona, including specific resources that are targeted to high risk populations.
4. Under this policy, Essential Activities include:
- a. Obtaining necessary supplies and services for family, household members and pets, such as groceries, food and supplies for household consumption and use, supplies and equipment needed to work from home, assignments for completion of distance learning and products necessary to maintain safety, sanitation and essential maintenance of the home and residence.
  - b. Engaging in activities essential for the health and safety of family, household members and pets, including things such as seeking medical, behavioral health or emergency services and obtaining medical supplies or medication.
  - c. Caring for a family member, friend, or pet in another household or residence, which includes but is not limited to transportation of a family member, friend or their pet for essential health and safety activities and to obtain necessary supplies and services for the other household.
  - d. Engaging in outdoor exercise activities, such as walking, hiking, running, biking or golfing, but only if appropriate physical distancing practices are used.
  - e. Attending or conducting work or volunteering in Essential Functions which includes but is not limited to transporting children to child care services for attending work in an essential service.
  - f. Engaging in constitutionally protected activities such as speech and religion, and any legal or court process provided that such is conducted in a manner that provides appropriate physical distancing to the extent feasible.
5. To the extent individuals are using shared or outdoor spaces when outside their residence or property for Essential Activities, they shall to the extent possible maintain physical distancing of at least six feet from any other person, consistent with guidance from the CDC.
6. All persons may leave their place of residence only for Essential Activities, to participate in or receive Essential Governmental Functions, or to participate in or fulfill Essential Functions outlined in Executive Order 2020-12.
7. Individuals shall limit use of public transportation to when absolutely necessary to obtain or conduct Essential Activities or attend work in an Essential Function. While using public transportation, riders shall maintain to the extent possible recommended physical distancing of at least six feet from other riders and the operator.

8. Individuals experiencing homelessness are exempt from this directive, but are strongly urged to obtain shelter as soon as possible and to the maximum extent practicable.
9. Individuals whose residences are unsafe or become unsafe, such as victims of domestic violence, are permitted and urged to leave their home and stay at a safe alternative location.
10. For purposes of this Executive Order, homes or residences include hotels, motels, shared rental units, shelters, and similar facilities.
11. Businesses and entities that remain open shall implement rules and procedures that facilitate physical distancing and spacing of individuals of at least six feet.
  - a. All businesses that are classified as Essential Functions may remain open and maintain operations, but shall establish and implement social distancing and sanitation measures established by the United States Department of Labor or the Arizona Department of Health Services.
  - b. Essential Functions conducted by governmental entities shall remain open. Government leaders may adjust operations to promote physical distancing, including but not limited to offering on-line services as feasible, limiting the number of persons in a physical space or limiting access to specific facilities or areas to protect from the spread of COVID-19.
  - c. Employment in Essential Businesses and Operations means an essential employee performing work for an Essential Function as identified in the "Prohibiting the Closure of Essential Services" Executive Order list.
12. Non-essential businesses may continue to operate those activities that do not require in-person, on-site transactions and are encouraged to maintain at least minimum basic operations that maintain the value of the business' inventory, preserve the condition of the business' physical plant and equipment, ensure security, process payroll and employee benefits, facilitate employees of the business being able to continue to work remotely from their residences, and related functions to include mail pickup.
13. This Executive Order shall not be construed to prohibit working from home, operating a single owner business with no in-person, on-site public interaction, or restaurants and food services providing delivery or take-away services, so long as proper physical distancing and sanitation measures are established and implemented.
14. Arizonans are already acting responsibly during this public health emergency. The intent of this Executive Order is to ensure that people maintain physical distance to the maximum extent feasible, while enabling essential services to continue, protecting people's rights and slowing the spread of COVID-19 to the greatest extent possible. When people need to leave their places of residence, whether to perform Essential Activities, or to otherwise facilitate authorized activities necessary for continuity of social and commercial life, they should at all times and as much as reasonably possible comply with physical distancing recommendations. All provisions of this Executive Order shall be interpreted to effectuate this intent. Prior to any enforcement action being taken to enforce this order in accordance with A.R.S. § 26-317, a person shall be notified and given an opportunity to comply.

15. Pursuant to A.R.S. § 26-307, no county, city or town may make or issue any order, rule or regulation that conflicts with the policy, directives or intent of this Executive Order, including any order, rule or regulation that limits an individual from conducting, participating in or receiving Essential Services, Essential Activities or Non-essential Services as outlined in this order and prior executive orders.

16. If any provision of this Executive Order or its application to any person or circumstance is held invalid by any court of competent jurisdiction, this invalidity does not affect any other provision or application of this Executive Order, which can be given effect without the invalid provision or application. To achieve this purpose, the provisions of this Executive Order are declared to be severable.

17. This Executive Order shall be in effect until April 30, 2020, unless extended.

**IN WITNESS WHEREOF**, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Arizona.



*Douglas R. Ducey*

**GOVERNOR**

**DONE** at the Capitol in Phoenix on this Thirtieth Day of March in the Year Two Thousand and Twenty and of the Independence of the United States of America the Two Hundred and Forty-Fourth.

**ATTEST:**

*[Signature]*

**Secretary of State**



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
WASHINGTON, D.C. 20460

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

March 26, 2020

**MEMORANDUM**

**SUBJECT:** COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

**FROM:** Susan Parker Bodine *Susan Parker Bodine*

**TO:** All Governmental and Private Sector Partners

As all of us at the U.S. Environmental Protection Agency adjust to the evolving COVID-19 pandemic, we are first and foremost mindful of the health and safety of the public, as well as our staff, and those of Federal Agencies, State and Local Governments, Tribes, Regulated Entities, Contractors, and Non-governmental Organizations. The agency must take these important considerations into account as we all continue our work to protect human health and the environment. Accordingly, we are announcing the following temporary policy regarding EPA enforcement of environmental legal obligations during this time.

The EPA will exercise the enforcement discretion specified below for noncompliance covered by this temporary policy and resulting from the COVID-19 pandemic, if regulated entities take the steps applicable to their situations, as set forth in this policy. For noncompliance that occurs during the period of time that this temporary policy is in effect, and that results from the COVID-19 pandemic, this policy will apply to such noncompliance in lieu of an otherwise applicable EPA enforcement response policy.

**APPLICABILITY**

This policy will apply retroactively beginning on March 13, 2020. Authorized states or tribes may take a different approach under their own authorities. The EPA will undertake to coordinate with other federal agencies in situations where the EPA shares jurisdiction over a regulated entity's environmental compliance obligations.

The EPA will assess the continued need for and scope of this temporary policy on a regular basis and will update it if the EPA determines modifications are necessary. In order to provide fair and sufficient notice to the public, the EPA will post a notification here <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications>, at least seven days prior to terminating this temporary policy.

The EPA will apply this policy to actions or omissions that occur while this policy is in effect even after the policy terminates.

**SCOPE**

At the EPA, we are cognizant of potential worker shortages due to the COVID-19 pandemic as well as

the travel and social distancing restrictions imposed by both governments and corporations or recommended by the Centers for Disease Control and Prevention to limit the spread of COVID-19. The consequences of the pandemic may affect facility operations and the availability of key staff and contractors and the ability of laboratories to timely analyze samples and provide results. As a result, there may be constraints on the ability of a facility or laboratory to carry out certain activities required by our federal environmental permits, regulations, and statutes. These consequences may affect reporting obligations and milestones set forth in settlements and consent decrees. Finally, these consequences may affect the ability of an operation to meet enforceable limitations on air emissions and water discharges, requirements for the management of hazardous waste, or requirements to ensure and provide safe drinking water. These are very distinct situations that the EPA plans to manage differently, as described below.

The enforcement discretion described in this temporary policy do not apply to any criminal violations or conditions of probation in criminal sentences. Appropriate consideration of potential criminal liability is discussed separately, below.

This policy does not apply to activities that are carried out under Superfund and RCRA Corrective Action enforcement instruments. Such matters will be addressed in a separate communication.

This policy does not apply to imports. We also are especially concerned about pesticide products entering the United States, or produced, manufactured, distributed in the United States, that claim to address COVID-19 impacts. The agency expects to focus on ensuring compliance with requirements applicable to these products to ensure protection of public health. Information relating to FIFRA import requirements can be found here: <https://www.epa.gov/compliance/importing-and-exporting-pesticides-and-devices>. This website will be updated to provide information on how to submit information via email, as may be necessary during the COVID-19 pandemic.

Finally, we realize that the general statements contained in this policy may not address every potential civil violation that may arise as a result of COVID-19. As such, the EPA may provide additional enforcement guidance applicable to specific programs on an ongoing basis and the EPA's self-disclosure program remains available.<sup>1</sup>

## **ENFORCEMENT DISCRETION**

### **I. Civil Violations**

#### **A. General conditions**

All enforcement discretion set forth in this temporary policy is conditioned on the following.

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

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<sup>1</sup> Regulated entities who voluntarily discover, promptly disclose, expeditiously correct, and take steps to prevent recurrence of potential violations may be eligible for a reduction or elimination of any civil penalties that otherwise might apply. Most violations can be disclosed and processed via the EPA's automated online "eDisclosure" system (*see* <https://www.epa.gov/compliance/epas-edisclosure>). To learn more about the EPA's violation disclosure policies, including conditions for eligibility, please review the EPA's Audit Policy website at <https://www.epa.gov/compliance/epas-audit-policy>. Many states also offer incentives for self-policing; please check with the appropriate state agency for more information.

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.

## **B. Routine compliance monitoring and reporting by regulated entities**

The consequences of the pandemic may constrain the ability of regulated entities to perform routine compliance monitoring,<sup>2</sup> integrity testing,<sup>3</sup> sampling,<sup>4</sup> laboratory analysis,<sup>5</sup> training,<sup>6</sup> and reporting or certification.<sup>7</sup>

Entities should use existing procedures to report noncompliance with such routine activities, such as pursuant to an applicable permit, regulation or statute. If no such procedure is applicable, or if reporting is not reasonably practicable due to COVID-19, regulated entities should maintain this information internally and make it available to the EPA or an authorized state or tribe upon request. In general, the EPA does not expect to seek penalties for violations of routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification obligations in situations where the EPA agrees that COVID-19 was the cause of the noncompliance and the entity provides supporting documentation to the EPA upon request.

After this policy is no longer in effect, the EPA expects full compliance going forward. In general, absent exigent circumstances, the EPA does not plan to ask facilities to “catch-up” with missed monitoring or reporting if the underlying requirement applies to intervals of less than three months. For other monitoring or reports, such as those required on a bi-annual or annual basis, when this policy is no longer in effect, the EPA expects facilities to take reasonable measures to resume compliance activities as soon as possible, including conducting late monitoring or submitting late reports. In some programs, there are sections or codes in the reporting form in which a facility may indicate why it has not conducted the required sampling and monitoring, and the EPA encourages facilities to include such information when submitting any late reports.

Many training classes are offered on-line and such on-line training generally should not be affected by

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<sup>2</sup> If affected by COVID-19, this category may include, for example, CEMS and stack tests, relative accuracy test audits, LDAR monitoring, fence line monitoring, RICE readings and monitoring, tank and piping inspections, assessments, or stormwater inspections.

<sup>3</sup> If affected by COVID-19, this category may, for example, include tank integrity testing (e.g., API 653) for compliance with certain “good air pollution control practices.”

<sup>4</sup> If affected by COVID-19, this category may include, for example, effluent sampling and testing, as well as cooling tower sampling.

<sup>5</sup> If affected by COVID-19, this category may include, for example, laboratory holding times and turn-around times.

<sup>6</sup> If affected by COVID-19, this category may include, for example, SPCC training, hazardous waste trainings, CAA section 129 renewals, and other annual re-certifications.

<sup>7</sup> If affected by COVID-19, this category may include, for example, reports and certifications associated with delayed activities described above, and late reports under permit or other regulatory obligations, including TRI and greenhouse gas inventory reporting.

travel and social distancing constraints. If practicable, sectors mandated to function with certified operators should maintain normal certification and training practices. If not practicable due to the COVID-19 pandemic, the EPA believes that it is more important to keep experienced, trained operators on the job, even if a training or certification is missed.

If a submission to the EPA requires a “wet” signature of a responsible official, the EPA 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. We strongly encourage the regulated community use the EPA’s approved electronic reporting mechanisms. For enforcement purposes, the EPA also will accept emailed submissions even if a paper original is required.

### **C. Settlement agreement and consent decree reporting obligations and milestones**

1. With respect to **EPA administrative settlement agreement** reporting obligations and milestones, if, as a result of COVID-19, parties to such settlement agreements anticipate missing enforceable milestones set forth in those documents, parties should utilize the notice procedures set forth in the agreement, including notification of a force majeure, as applicable. For EPA administrative settlement agreements, the EPA intends to treat routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and associated reporting or certification obligations in the manner described above and will generally not seek stipulated or other penalties for noncompliance with such obligations. The notification should provide the information required by the agreement, which typically will include steps taken to minimize the effects and duration of any noncompliance caused by COVID-19, as well as the information specified under subpart A, above. EPA staff will review these notifications and may contact a party to seek adjustments to a proposed plan of action, pursuant to the agreement.
2. With respect to **consent decrees entered into with the EPA and the U.S. Department of Justice**, these documents are agreements and court orders. EPA staff will coordinate with DOJ to exercise enforcement discretion with regard to stipulated penalties for the routine compliance obligations described in paragraph 1 and will also consult with any co-plaintiffs to seek agreement to this approach. Courts retain jurisdiction over consent decrees and may exercise their own authority. Parties should utilize the notice procedures set forth in the consent decree, including notification of a force majeure, as applicable, with respect to any noncompliance alleged to be caused by COVID-19.
3. Parties should proceed as proposed in their notice to the EPA (and to DOJ for consent decrees) unless and until contacted by the agency (if an EPA administrative settlement) or DOJ (if a judicial consent decree).

### **D. Facility operations**

**The EPA expects all regulated entities to continue to manage and operate their facilities in a manner that is safe and that protects the public and the environment.**

1. Facilities should contact the appropriate implementing authority (EPA region, authorized state, or tribe) if **facility operations impacted by the COVID-19 pandemic may create an acute risk or an imminent threat to human health or the environment**. Even in authorized programs, the EPA strongly encourages facilities, states, and tribes to consult with their EPA regional office on acute risks and imminent threats. If an entity contacts the EPA due to noncompliance that could result in an acute risk or an imminent threat to human health or the environment, the EPA will act as follows.

- a. The EPA's first step will be to consult with the state or tribe, if an authorized program, to discuss measures to minimize or prevent the acute or imminent threat to health or the environment from the COVID-19-caused noncompliance. State or tribal permits or regulations may have provisions that address the situation and result in a return to compliance. Consultation with authorized states or tribes will proceed in accordance with the July 11, 2019 memorandum on [\*Enhancing Effective Partnerships Between EPA and States in Civil Enforcement and Compliance Assurance Work\*](#).
  - b. In cases where the EPA implements the program directly:
    - i. The EPA regional office will evaluate whether an applicable permit, statutory, or regulatory provision addresses the situation. The EPA's Office of Enforcement and Compliance Assurance (OECA) will work with program offices on nationwide issues that may arise.
    - ii. If there is no permit/regulatory provision that addresses the situation, the EPA will work with the facility to minimize or prevent the acute or imminent threat to health or the environment from the COVID-19-caused noncompliance and obtain a return to compliance as soon as possible.
    - iii. The EPA will inform the relevant state or tribe of any acute threats and actions taken in response to the noncompliance.
    - iv. The EPA will consider the circumstances, including the COVID-19 pandemic, when determining whether an enforcement response is appropriate.
2. If a facility suffers from **failure of air emission control or wastewater or waste treatment systems or other facility equipment** that may result in exceedances of enforceable limitations on emissions to air or discharges to water, or land disposal, or other unauthorized releases, the facility should notify the implementing authority (EPA regional office or authorized state or tribe) as quickly as possible. The notification also should include information on the pollutants emitted, discharged, discarded, or released; the comparison between the expected emissions or discharges, disposal, or release and any applicable limitation(s); and the expected duration and timing of the exceedance(s) or releases. The EPA will consult with authorized states or tribes, as applicable, in accordance with the July 11, 2019 memorandum on [\*Enhancing Effective Partnerships Between EPA and States in Civil Enforcement and Compliance Assurance Work\*](#) to determine the appropriate response. Where the EPA implements the program directly, the EPA will evaluate whether the risk posed by the exceedance, disposal, or release is acute or may create an imminent threat to human health or the environment and will follow the steps set forth under paragraph 1.b. above.
  3. If facility operations result in **noncompliance are not already addressed by the EPA above**, regulated entities should take the steps identified under Part I.A. The EPA will consider the circumstances, including the COVID-19 pandemic, when determining whether enforcement response is appropriate.
  4. If a facility is a **generator of hazardous waste** and, due to disruptions caused by the COVID-19 pandemic, is unable to transfer the waste off-site within the time periods required under RCRA to maintain its generator status, the facility should continue to properly label and store such waste and take the steps identified under Part I.A, above. If these steps are met, as an exercise of enforcement discretion, the EPA will treat such entities to be hazardous waste generators, and not treatment, storage and disposal facilities. In addition, as an exercise of enforcement discretion, the EPA will treat Very Small Quantity Generators and Small Quantity Generators as

retaining that status, even if the amount of hazardous waste stored on site exceeds a regulatory volume threshold due to the generator's inability to arrange for shipping of hazardous waste off of the generator's site due to the COVID-19 pandemic.

5. If a facility is an **animal feeding operation**, and, due to disruptions caused by the COVID-19 pandemic, is unable to transfer animals off-site and, solely as a result of the pandemic, meets the regulatory definition of concentrated animal feeding operation (CAFO), as an exercise of enforcement discretion, the EPA will not treat such animal feeding operations as CAFOs (or will not treat small CAFOs as medium CAFOs, or medium CAFOs as large CAFOs). To receive this enforcement discretion an operation must take the steps identified under Part I.A, above.

#### **E. Public water systems regulated under the Safe Drinking Water Act**

Public water systems have a heightened responsibility to protect public health because unsafe drinking water can lead to serious illnesses and access to clean water for drinking and handwashing is critical during the COVID-19 pandemic. Accordingly, the EPA has heightened expectations for public water systems. The EPA expects operators of such systems to continue normal operations and maintenance as well as required sampling to ensure the safety of our drinking water supplies. The EPA expects laboratories performing analysis for water systems to continue to provide timely analysis of samples and results. States play the lead role on drinking water issues, but the EPA also has important drinking water enforcement and oversight responsibilities, including direct implementation responsibilities in some locations.

In the event of worker shortages in the water sector, the EPA will consider continued operation of drinking water systems to be the highest priority. In anticipation of worker shortage and laboratory capacity problems, the EPA considers the following tiers of compliance monitoring to assure the safety of our drinking water supplies and prioritize prevention of acute risks. Of highest priority is monitoring required under National Primary Drinking Water Regulations to protect against microbial pathogens. Additional priorities include nitrate/nitrite and Lead and Copper Rule monitoring followed by contaminants for which the system has been non-compliant. States may wish to adopt similar priorities.

The EPA is working closely with our federal partners, states, and other organizations to ensure resources and personnel are available to assist facilities facing staffing and contractor challenges during this period of COVID-19 response and the Office of Water plans to launch a website with this information. Accordingly, the EPA strongly encourages public water systems to consult with the state and EPA regional offices without delay if issues arise that prevent the normal delivery of safe drinking water and encourages states to continue to work closely with the EPA on measures to address the potential impacts of COVID-19. The EPA also encourages certified drinking water laboratories to consult with the state and the EPA if issues arise that prevent laboratories from conducting analyses of drinking water contaminants.

The EPA will consider the circumstances, including the COVID-19 pandemic, when determining whether any enforcement response is appropriate at public water systems acting in accordance with this subpart.

#### **F. Critical infrastructure**

In situations where a facility is essential critical infrastructure, the EPA may consider a more tailored short-term No Action Assurance, with conditions to protect the public, if the EPA determines it is in the

public interest. Such determinations are made by the OECA Assistant Administrator on a case-by-case basis. The EPA will consider essential the facilities that employ essential critical infrastructure workers as determined by guidance issued by the Cybersecurity and Infrastructure Security Agency.

## **II. State Oversight**

The EPA will continue State Review Framework reviews, and other state program oversight, as practicable, taking into consideration priority work in response to COVID-19. Until such time as dictated by travel and social distancing restrictions, the EPA believes states should take into account the safety and health of their inspectors and facility personnel and use discretion when making decisions to conduct routine inspections, notwithstanding any applicable compliance monitoring strategy. The EPA will take the COVID-19 pandemic into consideration in any review of a state compliance and enforcement program, such as the State Review Framework.

## **III. EPA Actions**

During the pendency of the current COVID-19 exigency, the EPA expects to focus its resources largely on situations that may create an acute risk or imminent threat to public health or the environment, to ensure protection against such risks or threats. All ongoing enforcement matters are continuing.

## **IV. Accidental Releases**

Nothing in this temporary policy relieves any entity from the responsibility to prevent, respond to, or report accidental releases of oil, hazardous substances, hazardous chemicals, hazardous waste, and other pollutants, as required by federal law, or should be read as a willingness to exercise enforcement discretion in the wake of such a release.

## **V. Criminal Violations**

The considerations described above apply to the vast majority of people and businesses who are making good faith efforts to comply with their obligations in this difficult time. Federal environmental statutes generally authorize criminal penalties for knowing conduct that violates the law. In screening cases to determine when to seek prosecutorial assistance from DOJ, the EPA will distinguish violations that facilities know are unavoidable as a result of COVID-19 restrictions from violations that are the result of an intentional disregard for the law. EPA's Criminal Investigative Division remains vigilant and is prepared to pursue violators who demonstrate a criminal *mens rea*.

This temporary policy makes EPA offices and the EPA's governmental and private sector partners, as well as the general public, aware of how the EPA intends to exercise its enforcement discretion with respect to certain compliance situations during the exigencies of the COVID-19 pandemic. This memorandum does not alter any provision of any statute or regulation that contains legally binding requirements, and it is not itself a regulation.