

COVID-19: U.S. Environmental Protection Agency/Arkansas Department of Energy and Environment - Division of Environmental Quality Guidance Compendium

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The COVID-19 virus has impacted our lives in novel ways and the level of disruption caused by the pandemic has manifested in a number of instances.

Those impacted by COVID-19 include facilities and activities subject to federal and Arkansas environmental regulatory programs.

Facilities are facing a temporary new normal regarding operational conditions. They include many throughout Arkansas subject to environmental permits and/or regulatory requirements. These permits are issued by the Arkansas Department of Energy and Environment's Division of Environmental Quality ("DEQ"). DEQ is delegated or approved by the United States Environmental Protection Agency ("EPA") to administer programs primarily addressing air, water, waste, and underground storage tank requirements.

Despite the challenges posed by COVID-19 most facilities have continued to comply with applicable permitting requirements and regulations. Nevertheless, there is a recognition by both DEQ and EPA that COVID-19 has caused staffing shortages and supply chain issues that pose challenges for various facilities.

Arkansas Governor Asa Hutchinson initially declared a state of emergency regarding the COVID-19 virus in an Executive Order issued on March 11, 2020. He subsequently issued Executive Order # EO 20-06 on March 17, 2020 for the explicit purpose of assisting state agencies in rendering maximum assistance to the citizens of Arkansas in regard to the public health emergency of COVID-19. Per the Executive Order, Governor Hutchinson ordered all state agencies to identify provisions of any regulatory statute, agency order or rule that impedes flexibility during this time. DEQ subsequently released guidance laying out measures to provide temporary compliance and regulatory relief to the regulated community.

EPA has issued a number of guidance documents as well. Whether a facility is subject to federal, state, or a combination of requirements, understanding these documents will be imperative moving forward.

In the short term, Arkansas's regulated community is facing the reality of limited resources and manpower due to measures that have been enacted due to COVID-19. Due to these limitations, requests

for regulatory flexibility and enforcement discretion will most likely need to be advanced to the DEQ and/or EPA in a number of instances.

There are a variety of potential remedies for relief, including, but not limited to:

- compliance assistance
- regulatory variance
- permit variance
- interim authority
- permit flexibility
- enforcement discretion

Our firm through this blog has already reported on a number of COVID-19 related items of interest regarding both DEQ and EPA announcements and guidance. Previous blog posts of interest include:

[Coronavirus Disease 2019: Governor Asa Hutchinson Executive Order 20-06](#)

[Coronavirus \(COVID-19\) of 2020: Arkansas Department of Energy and Environment - Division of Environmental Quality Director Becky Keogh Issues Emergency Order](#)

[Coronavirus\(COVID-19\): U.S. Environmental Protection Agency Issues Temporary Policy regarding Enforcement Discretion/Compliance Assurance](#)

[Coronavirus \(COVID-19\)/Arkansas Department of Energy and Environment - Division of Environmental Quality: Secretary Keogh Announces Staff to Work Remotely](#)

[Coronavirus \(COVID-19\): Arkansas Department of Energy and Environment Issues Environmental Enforcement Guidance](#)

[Coronavirus \(COVID-19\): Arkansas Department of Energy and Environment Establishes Resources and Information Webpage](#)

[Coronavirus \("COVID-19\)/U.S. Environmental Protection Agency Temporary Policy Addressing Enforcement Discretion: Environmental Organizations File Judicial Challenge](#)

[COVID-19/Part 75 Clean Air Act Regulations: U.S. Environmental Protection Agency Publishes Interim Final Rule Addressing Certain Monitoring/Reporting Requirements](#)

[COVID-19/Endangered Species Act: Center for Biological Diversity Notice of Intent to Sue Regarding U.S. Environmental Protection Agency Enforcement Discretion/Compliance Assurance Policy](#)

[COVID-19: EPA Answers Frequently Asked Questions Related to Coronavirus](#)

Obviously, these are fluid issues that will likely result in continued agency focus and guidance. Therefore, we will continue to track these issues as they evolve.