

Arizona Department of Environmental Quality (ADEQ)
Memorandum of Compliance and Enforcement - Continuing Operations with Innovation and Safety
December 24, 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.
- On March 31, 2020, ADEQ issued: Memorandum of Compliance and Enforcement Implementation during COVID-19.
- On June 29, 2020, EPA issued a memorandum terminating their March 26, 2020, policy, effective August 31, 2020.
- This table explains how ADEQ will continue compliance and enforcement operations with innovation and safety, effective December 24, 2020. This Memorandum replaces the March 31, 2020, Memorandum.

Issue	EPA Memorandum (March 26, 2020)	ADEQ Implementation (March 31, 2020)	ADEQ Continuing Operations with Innovation and Safety (December 24, 2020)
General Conditions for Non-compliance Caused by COVID-19	-Facilities should make every effort to comply with environmental regulations. -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.	-Consistent with ADEQ’s compliance management approach. ADEQ will add a requirement for documentation regarding COVID-19 to each informal notice.	-Language regarding COVID-19 documentation will remain on informal notices at this time.
Routine Compliance Monitoring and Reporting	-Use existing procedures to report noncompliance; or if none or not practicable, maintain information and make available upon request. -No “catch-up” reporting required if underlying requirement has intervals of less than 3 months.	-Consistent with ADEQ’s compliance management approach. ADEQ will add a requirement for documentation regarding COVID-19 to each informal notice.	-Language regarding COVID-19 documentation will remain on informal notices at this time. -ADEQ will continue to accept verifiable electronic and email submissions, when appropriate.

	<ul style="list-style-type: none"> -Other monitoring such as bi-annual or annual should resume ASAP, including conducting late monitoring or submitting late reports. -Facilities should use reporting sections or codes on forms to indicate why sampling/monitoring is not conducted -Emailed submissions allowed even if original is normally required. 	<ul style="list-style-type: none"> -ADEQ will accept emailed submissions in lieu of original documents if a facility is unable to provide an original. -ADEQ will accept electronic and scanned signatures for submitted documents. 	
Enforcement and Penalties for Compliance Monitoring and Reporting	<ul style="list-style-type: none"> -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. 	<ul style="list-style-type: none"> -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. 	<ul style="list-style-type: none"> -Language regarding COVID-19 documentation will remain on informal notices at this time. -ADEQ will continue to reserve escalated enforcement and penalties for only the most severe non-compliance.
Operator Certifications	<ul style="list-style-type: none"> -Certified operators should maintain certifications, but if not practicable, keep experienced operators on the job even if a training or certification is missed. 	<ul style="list-style-type: none"> -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. 	<ul style="list-style-type: none"> -ADEQ will continue to implement Executive Order 2020-17, which provides 6 months of deferment for required certification renewals, training, exams, and professional development hours (PDHs), for licenses that have an expiration date between March 1, 2020, and September 1, 2020.
Enforcement and Penalties for Settlement Agreements	<ul style="list-style-type: none"> -Use force majeure provisions and notice provisions in agreements when compliance is affected by COVID-19. 	<ul style="list-style-type: none"> -Consistent with ADEQ’s compliance management approach. 	<ul style="list-style-type: none"> -ADEQ will work with facilities to ensure return to compliance as fast as reasonably possible.

	<p>-Treat agreement compliance monitoring, sampling, lab, training, certifications, and reporting similar to routine compliance monitoring and reporting protocol above.</p> <p>-No stipulated or other penalties for non-compliance with routine agreement obligations such as those listed above, when caused by COVID-19.</p>	<p>-ADEQ will work with facilities to amend agreement schedules when appropriate.</p>	
Facility Operations	<p>-Expectation of continued facility operation that is safe and protects the public and the environment.</p> <p>-If operations create an acute risk or imminent threat to human health or the environment, the facility should notify EPA.</p> <p>-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.</p>	<p>-Consistent with ADEQ’s expectations of emitting/discharging facilities and ADEQ’s compliance management approach.</p> <p>- Permit exceedances that do not pose an acute risk to human health or the environment generally will be addressed through informal enforcement.</p>	<p>-ADEQ expects emitting and discharging facilities to comply with all applicable laws, and to return to compliance as fast as reasonably possible.</p> <p>-ADEQ will continue to reserve escalated enforcement and penalties for only the most severe non-compliance.</p>
Hazardous Waste	<p>-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.</p> <p>-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.</p>	<p>-ADEQ will align its compliance management approach with EPA.</p> <p>-ADEQ will add a requirement for documentation regarding COVID-19 to each informal notice.</p>	<p>-ADEQ will cease extending any discretion to hazardous waste generators.</p> <p>-ADEQ expects generators of hazardous waste to comply with all applicable laws.</p>
Animal Feeding Operations	<p>-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.</p>	<p>-Consistent with ADEQs compliance management approach. ADEQ will add a requirement for documentation regarding COVID-19 to each informal notice.</p>	<p>-Language regarding COVID-19 documentation will remain on informal notices at this time.</p> <p>-ADEQ expects animal operations facilities to comply with all applicable laws.</p>

<p>Public Water Systems (PWS) Regulated under the Safe Drinking Water Act (SDWA)</p>	<ul style="list-style-type: none"> -Heightened expectations for public water systems. -Continue normal operations, maintenance and sampling. -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. -Additional priorities are nitrate/nitrite and lead and copper rule monitoring, followed by contaminants for which the system has been non-compliant. -PWS and labs should consult with states immediately if issues arise with delivering safe drinking water and conducting analyses of contaminants. -EPA will consider circumstances when deciding on enforcement response. 	<ul style="list-style-type: none"> -Consistent with ADEQs expectations of public water systems and ADEQ’s compliance management approach. 	<ul style="list-style-type: none"> -ADEQ expects public water systems to comply with all applicable laws. -ADEQ should be notified immediately of any issues with public water systems and laboratory testing.
<p>Critical Infrastructure</p>	<ul style="list-style-type: none"> -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. -Essential critical infrastructure is determined by the Cybersecurity and Infrastructure Security Agency 	<ul style="list-style-type: none"> -ADEQ will address any conditions regarding critical infrastructure on a case-by-case basis. 	<ul style="list-style-type: none"> -ADEQ expects critical infrastructure facilities to comply with all applicable laws.
<p>Inspections</p>	<ul style="list-style-type: none"> -EPA believes states should use discretion when deciding to conduct routine inspections, to account for safety and health of inspectors and facility personnel. 	<ul style="list-style-type: none"> -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 practice social distancing and will accommodate, whenever practicable, facility specific concerns. 	<ul style="list-style-type: none"> -ADEQ is conducting inspections and file reviews with innovation and safety. -ADEQ is conducting virtual inspections when and where appropriate. -ADEQ field inspectors will continue to practice social distancing, wearing masks when social distancing is not possible, and accommodating, whenever

			practicable, facility specific concerns.
Accidental Releases	-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.	-ADEQ expects regulated facilities to prevent, respond to, and report releases of pollutants.
Criminal Violations	-Criminal penalties are reserved for violations that are the result of an intentional disregard for the law.	-Consistent with ADEQ's approach.	-ADEQ will continue to reserve escalated enforcement and penalties for only the most severe non-compliance.
ADEQ Implementation (March 31, 2020) 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.			ADEQ Continuing Operations with Innovation and Safety (December 24, 2020) -ADEQ will continue to focus on compliance assistance and informal enforcement, reserving escalated enforcement and penalties for only the most severe non-compliance. For informal enforcement, ADEQ is returning to pre-COVID program-specific protocol.