
Temporary Environmental Compliance Policy April 2, 2020

During this time of unprecedented public health concerns, we are being asked to take precautions and prioritize our activities to decrease the spread of COVID-19. In acknowledgement of the concerns about available staffing, travel restrictions and desire to limit the spread of the COVID-19 virus, the U.S. Environmental Protection Agency (EPA) has released a temporary policy regarding enforcement of environmental legal obligations during the COVID-19 pandemic.

Since the release of the EPA temporary policy, the North Dakota Department of Environmental Quality (NDDEQ) has received questions as to how the state, through its primacy agreements, plans to implement the federal policy in North Dakota. To address these inquiries, the temporary state compliance policy is as follows:

1. The policy is not a license to pollute. All permitted facilities will be required to comply with all pollutant limits and, where applicable, established environmental standards. All pollution control equipment shall be maintained, operated and monitored in compliance with applicable permit conditions or state law or rule. Any controlled discharges to the environment under the authority of an approved permit must be monitored and tested in accordance with the permit.
2. In cases where routine compliance testing (e.g., stack test) or reporting cannot be completed due to a staff shortage, travel bans on consultants or preventative measures designed to limit the spread of COVID-19, the NDDEQ may consider postponing the requirement until a future date. Any entity seeking relief in this area should contact the appropriate NDDEQ division (see page 2) to request consideration under the alternative compliance policy.
3. All spills such as pipeline breaks, truck accidents or activities resulting in an unpermitted discharge to the environment must be reported pursuant to state law and rule and remedied as soon as possible. Enforcement action relating to these types of incidents will be considered on a case-by-case basis.

Note that the NDDEQ, in partnership with the regulated community and citizens of the state, will continue to place emphasis on the requirement to protect public and environmental health. If cases arise that environmental compliance with state law or rule is or may be a challenge, it is important that the NDDEQ be contacted to ensure actions allowing alternative compliance actions are documented.

Documentation required will be:

1. Activity, report or action being requested to be postponed or rescheduled. Provide specific permit citations where appropriate.

2. Reason for the alternative compliance request. (e.g., documented staff shortage due to COVID-19 or travel restrictions on contractors). Also identify the anticipated impact on public and environmental health if the alternative compliance is approved.
3. Alternative date when report, testing or action will be completed.

This temporary alternative compliance action may apply to many diverse and separate facilities making the development of a comprehensive alternative compliance list difficult. Consequently, it is necessary that each entity document its own plan of alternative compliance and communicate it to the NDDEQ. The NDDEQ will consider each request based on the specific circumstances unique to each entity.

During these unprecedented times we will face anticipated and unanticipated challenges. By working together, we can ensure that priority activities are completed to protect public and environmental health.

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