

Complying with Environmental Regulations During COVID-19 Shutdowns/ Slowdowns

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Environmental compliance obligations (e.g. emission and discharge limitations, testing and sampling requirements, and monitoring and reporting obligations) continue to apply even when operations have been shuttered or severely curtailed.

Obtaining necessary permit approvals and submitting environmental compliance reports is further complicated because most agency offices are now closed to the public and many state and federal employees are working from home. The U.S. EPA and the Michigan Department of Environment, Great Lakes, and Energy (EGLE) have recently issued guidance documents addressing (i) the use of enforcement discretion during the COVID 19 pandemic and (ii) EGLE contacts to facilitate and speed processing of environmental permits and compliance submittals.

U.S. EPA and Michigan EGLE Enforcement Discretion Guidance

On March 26, the U.S. EPA **issued a temporary policy** stating that it will exercise enforcement discretion and not seek penalties for non-compliance with environmental requirements *if* the result of the COVID 19 pandemic. The policy does not prevent states and tribes from taking a different approach to enforcement.

EGLE has issued its own guidance on the exercise of enforcement discretion. The EGLE guidance specifically states that during the COVID-19 response, *“regulated entities are expected to maintain compliance with environmental regulations and permit requirements.”* EGLE nonetheless describes circumstances in which the department will consider extending reporting deadlines, waiving late fees, and otherwise exercising regulatory flexibility where unavoidable noncompliance is directly due to the present emergency.

Guidance for Permitting and Compliance Submittals to the Michigan EGLE

Many EGLE permitting programs utilize electronic permit application filing portals (e.g., the Water Division’s MiWaters). Where electronic portals exist, they remain the preferred method for submitting information to EGLE.

EGLE is currently developing more comprehensive guidance for interactions with citizens and the regulated community during the period in which its offices are closed to the public.

The EGLE Air Quality Division (**AQD**) **has recently issued comprehensive guidance** specifying email/electronic submittal contacts for many AQD programs.

- **Construction Permit Applications.** Permit to Install applications may be emailed to Annette Switzer, Permit Section Manager at **SwitzerA2@Michigan.gov**. Applicants should also mail three hard copies of the application to the address provided in the AQD guidance.
- **Operating Permits.** Renewable Operating Permit Applications should continue to be electronically sent to **EGLE-ROP@Michigan.gov**, with hard copies mailed to the appropriate district office. Permit modification requests may be sent to Caryn Owens at **OwensC1@Michigan.gov** with hard copies to follow.

Continued

- Air Emission Tests. Test Protocols and Stack Test Reports may be emailed to Karen Kajiya-Mills, Technical Programs Unit Supervisor, at **Kajiya-MillsK@Michigan.gov**. Hard copies should also be mailed to address provided in the AQD guidance.
- Communication with the AQD District Offices. Questions as to rule applicability, providing notice of stack testing activities, providing monitoring and sampling results, or submitting reports, among other things can be emailed to the appropriate district office. To facilitate communication with the public and regulated community during the COVID-19 emergency, the AQD guidance provides contact information for each of the district offices. The guidance specifically mentions the kinds of information that should be submitted to the Districts.

Regulated businesses facing compliance challenges should review both the EPA and EGLE policies closely to determine their applicability to the matter in question.

Please contact the authors or your Miller Canfield attorney with further questions.

This information is based on the facts and guidance available at the time of publication, and may be subject to change.