



STATE OF IDAHO
DEPARTMENT OF
ENVIRONMENTAL QUALITY

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Brad Little, Governor
John H. Tippetts, Director

Date: April 8, 2020
Subject: COVID-19 Regulatory Flexibility and Compliance Assistance
From: John H. Tippetts, Director
To: Facilities and Entities regulated by the Idaho Department of Environmental Quality

The Idaho Department of Environmental Quality's (DEQ's) mission statement is "to protect human health and the quality of Idaho's air, land, and water." DEQ is specifically tasked by law to protect the environment and to protect and promote the health, safety, and general welfare of the state. The COVID-19 crisis has highlighted our responsibility to the environment and to the people of Idaho. Throughout this crisis we will continue to do the following:

- Respond to environmental issues, such as spills and complaints.
- Provide technical assistance.
- Ensure permit coverage for regulated activities.
- Enforce the laws that protect human health and the environment.

DEQ's web page at www.deq.idaho.gov includes numerous COVID-19 resources designed to assist the citizens of Idaho in complying with environmental rules and regulations. The information provided on DEQ's website is subject to change and will be updated as new information and situations arise. We encourage the regulated community to review the web page frequently. The regulatory flexibility and compliance assistance provided in this policy is temporary and effective now until rescinded.

We do recognize, however, this crisis may temporarily affect the ability for some regulated entities to fully comply with all applicable environmental law requirements. The consequences of this pandemic may affect facility operations and the availability of key staff and contractors who normally perform certain legal or routine compliance requirements including, but not limited to the following: testing, sampling, monitoring/inspecting, certifying, laboratory analysis, training, and licensing renewals.

Consistent with other states and the federal government, the State of Idaho will consider the circumstances that affect a regulated entity's claimed inability to meet a specific legal requirement or routine compliance activity when determining whether to exercise enforcement discretion. Similar to

determining whether a force majeure event, also known as an Act of God event, renders compliance impracticable or perhaps even impossible, many of these decisions will be made on a case-by-case basis. It should be noted that most Consent Orders and Compliance Agreement Schedules entered into pursuant to Idaho Code Sections 39-108 and 39-116A contain force majeure provisions.

If discrepancies exist between this policy and those Consent Orders or Compliance Agreement Schedules, this policy takes precedent and control until it is terminated.

Entities should make every reasonable effort to comply with existing environmental compliance obligations. All laws, permits, consent orders, and compliance agreement schedules remain legally binding. During this pandemic, DEQ understands enforcement discretion in certain circumstances is warranted. If compliance with a specific law, permit, consent order or compliance agreement schedule requirement is deemed by a regulated entity to be unreasonable or impractical due to COVID-19, the entity must do the following:

- a. Act responsibly under the circumstance to minimize the impacts, effects, and duration of any noncompliance caused by COVID-19.
- b. Identify the specific nature and dates of the noncompliance, or the anticipated dates of noncompliance.
- c. Specifically identify how COVID-19 was the cause of the noncompliance, and all decisions and actions taken in response, including best efforts to comply and steps taken to return to compliance at the earliest opportunity.
- d. Return to compliance as soon as possible.
- e. Document information, actions, or conditions in points a through d with specificity.

DEQ strongly encourages entities to consult with appropriate DEQ staff prior to the circumstance interfering with regulatory compliance, or as soon as it is practicable after.

If noncompliance directly impacts human health and the environment, the entity must immediately notify DEQ.

The majority of DEQ's staff is telecommuting per the Governor's Stay Home Order and is available by email and phone. DEQ's staff is processing permit applications, holding virtual negotiated rulemaking meetings, reviewing regulatory submittals, responding to complaints, and conducting business as usual to the extent practicable while making every effort to responsibly maintain the health and safety of our employees and the citizens of Idaho.

The information below provides examples of specific program regulatory flexibility that DEQ is now exercising. We encourage you to reach out to us directly, as soon as possible, to discuss any issues your facility may be experiencing that may impact your ability to comply with applicable environmental regulations. Points of contact are provided at the end of each section (Air Quality, Water Quality, and Waste Management and Remediation).

AIR QUALITY

Clean air is important to Idahoans and DEQ strives to protect and, in some areas, improve air quality. DEQ will consider specific requests from regulated entities for extensions of certain legal requirements or routine compliance activities where noncompliance resulted from the COVID-19 pandemic. DEQ has identified areas of potential regulatory flexibility below.

Air Quality Visible Emissions Certifications: Visible Emission (VE) certification renewals are required every 6 months; therefore, certifications are extended for 6 months. All facilities will follow the procedure listed below:

- If possible, facilities should continue to have currently certified individuals conduct VE inspections as required by existing permit or regulation. Entities that cannot conduct VE inspections as required should identify how COVID-19 was the cause of the noncompliance and document the specific nature with the date of the noncompliance.
- DEQ will not ask facilities to “catch up” on any missed VE inspections due to COVID-19.

Air Quality Emission Testing: A 90-day extension to a required emission test (stack test, performance test) can be granted to a facility with a written request that includes the following:

- All extension requests must cite the applicable permit or regulation requiring the test, the equipment and pollutant(s) to be tested, how COVID-19 is the cause or reason for the extension request, and the anticipated scheduled test date(s).
- All extension requests should be made as soon as practical prior to the test due date.

Air Quality Excess Emissions Reporting: Twenty-four hour Excess Emissions notifications required by IDAPA 58.01.134.02.b can be submitted as soon as possible if a facility experiences delay due to COVID-19. Fifteen day Excess Emission reports required by IDAPA 58.01.01.135 can be extended up to 90 days upon written request.

Air Quality Monitoring, Recordkeeping, and Reporting Requirements: A 90-day extension to required Monitoring, Recordkeeping and/or Reporting Requirements (MRRR) can be granted to a facility with a written request. Examples of MRRR include, but are not limited to, semiannual reports, Annual Compliance Certifications, initial notification reports, or MRRR in permit conditions or regulation requirements. A written extension request must include the following:

- The specific nature and dates of the noncompliance.
- 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.

Facilities must take reasonable measures to resume MRRR activities as soon as possible.

Air Quality Enforcement Reporting: Facility reporting associated with a Warning Letter, Notice to Comply (NTC), Notice of Violation (NOV), or Consent Order (CO) can be extended upon written request by the facility for up to 90 days. The facility should identify how COVID-19 was the cause of

the request, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity.

AIR CONTACTS

Visible Emission, MRRR, and Emission Testing Contact Information:

Boise, Dave Luft: David.Luft@deq.idaho.gov, 208-373-0550 or 888-800-3480

Coeur d'Alene, Shawn Sweetapple: Shawn.Sweetapple@deq.idaho.gov, 208-769-1422 or 877-370-0017

Idaho Falls, Rensay Owens: Rensay.Owen@deq.idaho.gov, 208-528-2650 or 800-232-4635

Lewiston, Philip Hagihara: Philip.Hagihara@deq.idaho.gov, 208-799-4370 or 877-541-3304

Pocatello, Melissa Gibbs: Melissa.Gibbs@deq.idaho.gov, 208-236-6160 or 888-655-6160

Twin Falls, Bobby Dye: Bobby.Dye@deq.idaho.gov, 208-736-2190 or 800-270-1663

Enforcement Reporting and General Contact Information:

State Office, Wally Evans: Wally.Evans@deq.idaho.gov, 208-373-0190

State Office, Michael Simon: Michael.Simon@deq.idaho.gov, 208-373-0212

WATER QUALITY

DRINKING WATER

Maintaining a safe drinking water supply is important to Idahoans, and drinking water facilities have been identified by the Governor as essential services. Owners and operators of public drinking water systems need to continue with normal operations, maintenance, and sampling to ensure safe drinking water supplies. DEQ identified the following flexibilities:

- **Monitoring Requirements Due to Facility Closures:** Certain regulated public water systems, such as schools, restaurants, campgrounds, or other businesses, may be closed due to COVID-19 and may not be able to perform the required monitoring for bacteria, nitrate, or other contaminants. DEQ requests the public water system owner or operator contact their local DEQ regional office or health district by phone or email to notify them of the closure and before the facility reopens. DEQ can suspend routine monitoring during the time of closure if the facility is closed.
- **Monitoring Locations:** Drinking water system operators may face challenges with some monitoring requirements. Monitoring associated with samples taken in homes or businesses for bacteria, disinfectant residual, and lead and copper may be challenging. DEQ provides the following information to owners and operators of systems to help identify alternative locations for sampling during the COVID-19 event: <https://www.deq.idaho.gov/media/60184041/covid-19-letter-to-dw-operators-0320.pdf>.

Information regarding the availability of Idaho's certified drinking water laboratories is maintained on the Public Water System Switchboard: <https://www.deq.idaho.gov/pws-switchboard/>.

WASTEWATER

Wastewater facilities have also been identified by the Governor as essential services. It is critical that these facilities continue to provide treatment and disposal services around the state. There is no legal mechanism to suspend Idaho Pollutant Discharge Elimination System (IPDES) or recycled water permit requirements. However, the IPDES and Wastewater Engineering Bureaus will evaluate specific situations and use enforcement discretion as applicable. To help ensure that facilities are able to continue functioning, DEQ recommends the following practices and flexibilities.

- **Monitoring:** DEQ encourages facilities to continue sampling and analyzing according to the permit, so long as it is safe to do so. At this time, the risk of transmission through influent is expected to be low based on data from previous outbreaks of related coronaviruses. Those facilities using a contract or consulting wastewater operator may consider limiting the access of the contractor if it would threaten the health of the other staff at the facility. In this scenario, the facility should use the reporting process outlined below.
- **IPDES Permit Required Reporting:** DEQ utilizes EPA's NetDMR system for reporting monthly discharge monitoring. This automated system will generate a DMR nonreceipt if a facility does not fill out the monthly required report. Facilities should continue to report as usual. If data are missing due to the COVID-19 pandemic, facilities should use a no data indicator (NODI) code relevant to this situation. EPA generated a new code, **Z: COVID-19**, to allow a facility to show that the reason no data are available is due to the pandemic. Use of this code will not automatically generate a permit violation whereas nonreceipt of a DMR would. Documentation in the comments field should include a brief description about why no data are available (e.g., lab closed due to virus).
- **Unanticipated Discharges:** If a facility foresees a need to discharge outside the parameters of their permit, the responsible official should contact DEQ immediately. DEQ will work with the facility to determine the best possible path forward, which may include a voluntary Compliance Agreement Schedule. If a facility becomes aware of an event that has already occurred and requires 24-hour noncompliance reporting, the facility should call the IPDES hotline (1-833-473-3724 or 833-IPDES24) within 24 hours of the event and submit the 5-day written report in accordance with its permit.
- **Lagoon Seepage Testing:** Seepage testing can be postponed until a later date if testing cannot be conducted in a safe manner.
- **Submittal of Compliance Schedule Items:** Facilities should contact DEQ if there is a compliance schedule, Compliance Agreement Schedule, or Consent Order deliverable that is due within the next 6 months (by October 2020) to discuss the feasibility of extending the due date. DEQ will provide flexibility and regulatory relief for facilities impacted by COVID-19 where we can, or continue to provide, environmental protection. Extensions to Compliance Agreement Schedules, Consent Orders, or other agency timelines will be addressed on a case-by-case basis and will consider the unique challenges for each situation

DRINKING WATER AND WASTEWATER

- **Drinking Water and Wastewater Construction Projects and Loans:** If drinking water and wastewater projects are delayed, owners or their consulting engineers need to notify the DEQ regional engineering manager of the delays in writing. Drinking water engineering plan and specification approvals expire one year after the approval date. If project owners experience delays, DEQ is committed to providing necessary extensions and flexibilities on approved projects to allow for project completion. When necessary, loan terms may be revised.
- **Responsible Charge Operators:** DEQ has oversight of public drinking water and wastewater systems. The Board of Water and Wastewater Professionals at the Idaho Bureau of Licensing oversees licensing and license renewals of operators. DEQ believes that continuity of operations is important and will use enforcement discretion for public drinking water and wastewater systems where the responsible charge operator's license has lapsed due to COVID-19 and a back-up operator is not in place.

WATER CONTACTS

Drinking Water Monitoring and Compliance: <http://dww.deq.idaho.gov/drinkingwatercontacts/>.

Engineering Projects for Water and Wastewater:

Boise, Valerie Greear: Valerie.Greear@deq.idaho.gov, 208-373-0550

Coeur d'Alene, Matthew Plaisted: Matthew.Plaisted@deq.idaho.gov, 208-666-4612 Idaho Falls,

Greg Eager: Gregory.Eager@deq.idaho.gov, 208-528-2650 Lewiston, Michael Camin:

Michael.Camin@deq.idaho.gov, 208-799-4370 Pocatello, David Goings:

David.Goings@deq.idaho.gov, 208-236-6160

Twin Falls, Michael Brown: Michael.Brown@deq.idaho.gov, 208-736-2190

Drinking Water and Wastewater Loans:

State Office, Tim Wendland: Tim.Wendland@deq.idaho.gov, 208-373-0439

IPDES Permit Compliance and Reporting:

State Office, Brynn Lacabanne: Brynn.Lacabanne@deq.idaho.gov, 208-373-0289

IPDES Regional Compliance Officers:

Boise, James Craft: James.Craft@deq.idaho.gov, 208-373-0144

Coeur d'Alene, Wes Green: Wes.Green@deq.idaho.gov, 208-666-4639

Idaho Falls, Jason McDermott: Jason.McDermott@deq.idaho.gov, 208-528-2664

Lewiston, Tia Drew: Tianna.Drew@deq.idaho.gov, 208-799-4887

Twin Falls, Nicholas Waters: Nicholas.Waters@deq.idaho.gov, 208-737-3876

Wastewater Lagoon Seepage Testing:

State Office, Tressa Nicholas: Tressa.Nicholas@deq.idaho.gov, 208-373-0116

WASTE MANAGEMENT AND REMEDIATION

Hazardous waste management, solid waste management, and underground storage tank facilities should continue with normal operations during COVID-19. Upon receipt of a written request from a regulated entity, DEQ will consider site-specific extensions of certain legal requirements or routine compliance activities, if, on a case-by-case basis, DEQ agrees that such noncompliance resulted from the COVID-19 pandemic, and the request includes appropriate justification. DEQ has identified the following areas of potential regulatory flexibility:

- **Hazardous Waste Management:** Hazardous waste management facilities may encounter challenges with some legal requirements or routine inspection and monitoring activities. Certain routine inspections that hazardous waste facilities are required to perform (e.g., daily tank inspections, weekly container inspections) may be delayed or performed on a reduced frequency, depending on the situation and the risk posed by the waste being managed. Hazardous waste closure schedules and hazardous waste ground water monitoring requirements may be extended, depending on the situation. If a facility is unable to transfer hazardous waste off-site within the time periods required under the hazardous waste regulations, the facility should continue to properly label and store such waste and take the steps identified in the DEQ COVID-19 Regulatory Flexibility and Compliance Assistance policy for documenting the noncompliance. All extensions or enforcement flexibility will be evaluated by DEQ on a case-by-case basis. Hazardous waste management facilities should contact DEQ to discuss these and other compliance activities. DEQ provided information to hazardous waste and used oil handlers at <https://www.deq.idaho.gov/media/60184055/covid-19-hw-generators.pdf>.
- **Solid Waste Management:** Solid waste management facilities may encounter challenges with certain operational activities or routine operating plan updates. Solid waste ground water monitoring requirements may be extended, depending on the situation. Quarterly methane monitoring should be continued on a quarterly basis. Facilities should contact DEQ immediately if scheduled methane monitoring cannot be performed. Routine operating plan updates for solid waste facilities may be extended, depending on the situation. All extensions or enforcement flexibility will be evaluated by DEQ on a case-by-case basis. Solid waste management facilities should contact DEQ to discuss these and other compliance activities. DEQ provided information for health care facilities and residents at <https://www.deq.idaho.gov/waste-mgmt-remediation/solid-waste/covid-19-wastes/>.
- **Underground Storage Tanks:** Underground storage tank facilities may encounter challenges with conducting certain routine inspection and monitoring requirements. All extensions and enforcement flexibility will be evaluated by DEQ on a case-by-case basis. Underground storage tanks facilities should contact DEQ to discuss compliance activities. DEQ provided information to underground storage tank facilities at <https://www.deq.idaho.gov/media/60184051/ust-covid-19-letter-0320.pdf>.

Note that hazardous waste facilities, solid waste facilities, and other entities subject to financial assurance requirements must ensure the applicable financial assurance continues during this period.

DEQ may also provide extensions on some types of employee training and certification renewal requirements. Employees who previously received proper training and certification, even if lapsed, must be the same staff who continue to do the work required. Other employees or relief employees who have not received the baseline training or do not have the certification may not replace or substitute for trained and certified employees. These temporary measures will terminate when this pandemic ends and typical operations can be initiated.

WASTE CONTACTS

Hazardous Waste:

Caroline Moores: Caroline.Moores@deq.idaho.gov, 208-373-0554

Hazardous Waste Permits:

Brian English: Brian.English@deq.idaho.gov, 208-373-0425

Solid Waste:

Matt Beeter: Matthew.Beeter@deq.idaho.gov, 208-373-0121

Underground Storage Tanks:

Kristi Lowder: Kristi.Lowder@deq.idaho.gov, 208-373-0347

Remediation:

Derek Young: Derek.Young@deq.idaho.gov, 208-373-0525

Regional Office Information:

Boise, Albert Crawshaw: Albert.Crawshaw@deq.idaho.gov, 208-373-0550 or 888-800-3480

Coeur d'Alene, Gary Stevens: Gary.Stevens@deq.idaho.gov, 208-769-1422 or 877-370-0017

Idaho Falls, Rensay Owens: Rensay.Owen@deq.idaho.gov, 208-528-2650 or 800-232-4635

Lewiston, Dana Harper: Dana.Harper@deq.idaho.gov, 208-799-4370 or 877-541-3304

Pocatello, Doug Tanner: Doug.Tanner@deq.idaho.gov, 208-236-6160 or 888-655-6160

Twin Falls, Bobby Dye: Bobby.Dye@deq.idaho.gov, 208-736-2190 or 800-270-1663