

Working with Environmental Agencies When Managing Business Impacts from COVID-19

Alert

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Since the COVID-19 pandemic, federal, state and local agencies have adapted their procedures to both working remotely and allowing certain flexibilities for companies if specific efforts are made. A summary of these changes are below. Collectively, these policies show a willingness from state and federal agencies to work with regulated entities impacted by COVID-19. These will need to be done on a jurisdiction-specific and fact-specific basis, but agency protocols are in place in many locations.

Federal Agency Policy Changes

The Environmental Protection Agency (EPA) and many state agencies have issued policies concerning enforcement and regulatory activities during this time. For example, EPA issued its [Enforcement Discretion Policy for COVID-19 Pandemic policy](#) on March 26, 2020, which recognized the challenges resulting from efforts to protect the public from COVID-19, which can directly impact the ability of regulated facilities to meet all federal regulatory requirements. The policy states that EPA's priority during the outbreak will be situations that may create an acute risk or imminent threat to public health or the environment "to ensure protection against such risks or threats." This policy provides a foundation of flexibility for potential violations or regulatory requirements not involving an immediate threat and recognizes the challenges that entities currently face in regard to COVID-19 response actions.

On March 16, 2020, the Department of Justice (DOJ) began issuing policies related the COVID-19 outbreak. The first of these policies addressed the department's priorities, which included ensuring the safety of all judges, court staff, lawyers, parties, jurors and witnesses. The department also emphasized the importance of detecting, deterring, and punishing wrongdoing related to the outbreak, such as reports of fake cures and other forms of fraud. DOJ has also [indicated](#) that in some cases it will be suspending

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payment of stipulated penalties under consent decrees through May 31, 2020.

[View a list of the issued DOJ COVID-19 policies.](#)

Other federal agencies have similarly relaxed their regulations or practices. As examples, the Federal Railroad Administration issued a [Declaration of Emergency Situation: Novel Coronavirus 2019](#), activating an Emergency Relief Docket, and the Pipeline and Hazardous Materials Safety Administration issued [several COVID-19 policies](#) including a [Stay of Enforcement for Pipeline Operators Due to COVID-19 Outbreak](#).

Missouri Policy Changes

The Missouri Department of Natural Resources (MDNR) issued a letter on March 24, 2020 describing its position on enforcement during the pandemic. In this letter, MDNR states that it understands that entities might have to prioritize their compliance activities due to limited resources. It reiterates that MDNR's first priority is protection of human health and the environment. The letter goes on to direct entities to contact MDNR if they are affected by challenges in responding to COVID-19.

The Administrative Hearing Commission has suspended all in-person hearings through May 15, 2020. Exceptions include emergency suspensions, stay orders, and Individuals with Disabilities in Education Act cases. These cases will be conducted by telephone. Filing deadlines are not suspended due to electronic and fax filing capabilities.

Suspended Regulations in Missouri

Governor Mike Parson has temporarily suspended certain regulations governing animal feeding operations and concentrated animal feeding operations (CAFOs) in the state through May 15, 2020. The suspended provisions lift certain limits on animal numbers, required buffer-zones and neighbor notification requirements for existing facilities during the suspension. The governor has also suspended Section 640.710.2, RSMo limiting buffer distances between CAFOs and public buildings and residences for the same timeframe.

[View other regulations that have been suspended under this action.](#)

Through Executive Orders 20-02 and 20-04, the MDNR suspended four rules to eliminate certain provisions that are overly burdensome, such as the requirements for hard-copy submissions of wastewater facility plans and hazardous-waste generator documents. This suspension expires May 15, 2020.

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Kansas Policy Changes

The Kansas Department of Health and Environment (KDHE) has not issued any environmental policies regarding the treatment of environmental enforcement during the pandemic, and the change to remote work has had slight effects on KDHE business. It is important to contact KDHE early on regarding any issues, as delays may be expected and any mail communication may be slow to be received. KDHE staff remain to be responsive, but delays caused by remote work should be expected.

The Kansas Office of Administrative Hearings (OAH) [reopened](#) on April 6, 2020, but the physical office remains closed to the public through at least May 3, 2020. All prehearing conferences and hearings will be held as scheduled unless the parties are specifically notified by OAH otherwise. OAH has also implemented an alternate procedure for submittal of filings.

Working with Federal and State Agencies Remotely

Among the major challenges to working remotely during the COVID-19 outbreak is the challenge of communicating, negotiating and working with state and federal agencies have varying infrastructure in place to facilitate remote working. This requires specific knowledge about the agencies' internal processes for information sharing and project delegation. When working with state or local agencies, understanding the policy and structure changes due to the outbreak will help projects go quickly and smoothly. In addition, ongoing and open communications with the agency are critical, especially if trying to seek exemption or coverage under one of the policies identified above.

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