

## Publications

### *Client Alert: Thinking About Delaying Environmental Compliance Due to COVID-19? Think Carefully!*

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As businesses across the United States confront the ongoing impact of the COVID-19 pandemic, the Vorys environmental team is ready to provide counsel and guidance on a number of potential issues. As the situation continues to evolve day by day, we recommend carefully reviewing each of your facilities' environmental-related permits, orders, and other compliance obligations, keeping the following issues in mind:

1. Ensure that upcoming reporting, compliance, or permit renewal deadlines are being tracked, and that plans are in place to comply with those timelines. If staffing or other issues might make compliance infeasible, consider whether the state, local, or federal agency with jurisdiction has the authority to waive the deadline.
  2. For permit renewals, recall that under many programs (e.g. NPDES, Title V) a facility is permitted to operate under an existing permit, and the permit shield continues in place, so long as a renewal application is submitted timely.
  3. Consider the entire chain of companies and individuals involved in your compliance and reporting obligations. For example, many facilities rely on third party consultants and labs to meet testing and reporting obligations. Consider reaching out to these entities to confirm that they have plans in place if, for example, travel restrictions are enhanced.
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1. Ohio EPA has produced guidance ([attached](#)) for the designation and identification of essential employees related to the provision of wastewater or water services.

2. Consider whether your industry/organization could be considered a critical function or essential business. At the federal level, the Department of Homeland Security Cybersecurity and Infrastructure Security Agency (CISA) issued a “Memorandum on Identification of Essential Critical Infrastructure Workers during COVID-19 Response.” In its [guidance](#), CISA sets forth a recommended list of “Essential Critical Infrastructure Workers” to help determine the sectors, sub-sectors, segments, or critical functions that should continue normal operations. Ohio has adopted a “Stay at Home” [Order](#) excepting many of the same categories of essential businesses. Other states have adopted similar orders.
4. Many Orders entered into between regulated entities and environmental regulators include specific compliance deadlines coupled with stipulated penalties for non-compliance, in addition to force majeure provisions. These force majeure provisions often require that notice be provided to the regulator within a specific time period after the regulated entity knew or should have known of the event causing the delay. Whether a force majeure provision might apply is highly situation specific. We strongly recommend reaching out to a Vorys environmental attorney before relying on a force majeure provision.
5. Many environmental agencies may be operating with reduced staffing, or reduced availability of staff. Paperwork and self-reporting obligations will continue to be held to a very high standard. Do not assume any of these reporting obligations have been waived – as they have not. It is better to ask for (and receive) permission rather than asking for forgiveness after the fact.
6. If your business is contemplating a potential halt in operations (even if temporary), consider whether there are environmental laws applicable to ceasing certain operations. For example, Ohio EPA’s cessation of regulated operations requirements which mandates submittals to Ohio EPA. (Ohio Adm. Code 3745-352.) Your state may have similar cessation obligations, Vorys can assist in the identification of, and compliance with, these requirements.

The list of issues above is not exhaustive, nor is it intended to be an in-depth explanation of each. There are potentially serious ramifications of unapproved and un-waived non-compliance, including but not limited to potential civil penalties. In addition, the complexity inherent in obtaining a discretionary waiver of a deadline or other requirement, invoking force majeure, or taking advantage of statutory or regulatory exemption means that an environmental attorney should be involved in any determination involving non-compliance with an obligation imposed by permit, order, rule, statute or any other source.

Please contact any member of the Vorys environmental team for assistance regarding any of the above identified issues, or any other environmental compliance issues facing your business during this tumultuous time. We will continue to provide updates to this notice as the COVID-19 situation continues to evolve.

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## Vorys COVID-19 Task Force

Vorys attorneys and professionals are counseling our clients in the myriad issues related to the coronavirus (COVID-19) outbreak. We are taking significant steps to ensure we remain proactive during this extremely fluid environment. The business and legal challenges our clients are facing are changing each day.

We have also established a comprehensive Coronavirus Task Force, which includes attorneys with deep experience in the niche disciplines that we have been and expect to continue receiving questions regarding coronavirus. Learn more and see the latest updates from the task force at [vorys.com/coronavirus](https://vorys.com/coronavirus).