



1901 N. FORT MYER DRIVE • SUITE 500 • ARLINGTON, VA 22209-1604 • 703-351-8000 • FAX 703-351-9160

PMAA REGULATORY ALERT

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US EPA ISSUES ENFORCEMENT DISCRETION POLICY FOR ROUTINE COMPLIANCE REQUIREMENTS

PMAA Contact: Mark S. Morgan Regulatory Counsel: mmorgan@pmaa.org

The U.S. EPA issued general enforcement discretion policy this week designed to address difficulties regulated parties may have maintaining certain routine compliance requirements due to the COVID-19 outbreak. Specifically, the U.S. EPA will not seek civil penalties for the following:

- Routine Monitoring and Reporting
- Integrity Testing
- Sampling
- Lab analysis,
- Training
- Certification

NONCOMPLIANCE REPORTING AND RECORDKEEPING

Regulated parties unable to comply with these routine requirements must use any existing regulatory procedures to report noncompliance. If there are no underlying regulatory procedures to report noncompliance, a detailed record of the noncomplying event must be kept on file including an explanation of why the COVID-19 outbreak made compliance impracticable. The information must be made available to the EPA for review upon request. Specifically, where compliance is not practicable due to the COVID-19 outbreak regulated parties should do the following:

- Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19;
- Identify the specific nature and dates of the noncompliance;
- Identify 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;
- Return to compliance as soon as possible; and

- Document the information, action, or condition specified in all of the above.

POST COVID-19 RESUMPTION OF COMPLIANCE:

Once the COVID -19 emergency is lifted and normal compliance requirements resume, the EPA will not ask regulated parties to “catch-up” with monitoring and reporting if the underlying regulatory requirement applies to intervals less than three months. All other monitoring and reporting requirements in intervals greater than three-month intervals must be made up within a reasonable time frame once the COVID-19 emergency is lifted and the enforcement discretion is lifted.

ACCIDENTAL RELEASES:

During the enforcement discretion period, regulated parties must continue to take every precaution to prevent, contain and report accidental releases of hazardous substances and other chemicals including all petroleum products.

CRIMINAL PENALTIES:

The EPA will not wave criminal penalties during the enforcement discretion period.

EPA AUTHORIZED STATE PROGRAMS:

The EPA is urging states with regulatory programs authorized by the EPA, such as state UST programs, to adopt a similar enforcement discretion policy. However, it is up to each individual state to make the final decision to do so.

IMPACT ON PETROLEUM MARKETERS:

The enforcement discretion policy for the *routine compliance requirements* listed above apply to the following EPA programs affecting petroleum marketers:

- UST regulations in [the 12 states where EPA has UST program authority](#).
- SPCC regulations
- Petroleum product sampling
- Any EPA program imposing the routine monitoring and reporting compliance requirements above except for cleanup related activities carried out under Superfund and RCRA corrective action enforcement orders.

EPA ENFORCEMENT DISCRETION POLICY:

The EPA COVID-19 enforcement policy can be found here: [EPA COVID-19 Enforcement Discretion Policy](#)

IMPORTANT! This is not a blanket waiver of EPA compliance requirements. Enforcement discretion will only be used for the routing compliance requirements listed above.

IMPORTANT! Petroleum marketers who are unsure whether the enforcement discretion applies to a specific compliance requirement they must meet should contact their regional EPA headquarters for clarification. The contact information for EPA Regional Offices can be found here: [EPA Regional Office Contact Information](#)

Got questions? PMAA Contact: Mark S. Morgan, Regulatory Counsel: mmorgan@pmaa.org