



## EPA Issues Temporary Advisory for NPDES Reporting During COVID-19

04.20.2020

We recently provided a summary of EPA's guidance entitled ***COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program***. In this initial guidance, EPA reminded the regulated community that, while it was continuing to enforce environmental laws and regulations, considerable "discretion" would be used in enforcement of monitoring, record keeping, training and operational requirements during the COVID-19 pandemic.

Clarification has followed in the form of Question and Answer guidance on EPA's website, as well as program-specific policies for drinking water and wastewater utilities and parties engaged in response activities at Superfund and RCRA sites. In addition, on March 31, 2020, EPA released ***Temporary Advisory for National Pollutant Discharge Elimination System (NPDES) Reporting in Response to COVID-19 Pandemic*** (the "Temporary Advisory"). That document provides guidance to regional EPA personnel and states on how to implement the agency's initial enforcement discretion concerning NPDES reporting requirements tracked in EPA's Integrated Compliance Information System (ICIS-NPDES).

The Temporary Advisory addresses scenarios in which an NPDES permittee is unable to make a timely report to EPA as a result of government health and safety restrictions or operational shutdowns associated with COVID-19. NPDES permittees who use an electronic reporting tool and fail to timely report would normally receive an automatically generated non-receipt violation.

However, EPA encourages permittees facing such a situation to use a COVID-19 specific "No Data Indicator" code created by EPA to denote the extenuating circumstance. Permittees should also include the comment "COVID-19" on their DMR form. Using these indicators will alert EPA to the fact the permittee believes the enforcement discretion policy applies to the noncompliance and alert the ICIS-NPDES system not to generate an automatic non-receipt violation.

Where permittees are unable to report electronically, they may submit an electronic waiver request to EPA. Emergency waivers may be granted for up to 60 days at a time. If the permittee is unable to obtain a waiver from electronic reporting, it must continue to make every effort to return to compliance as soon as possible, document all noncompliance and how it is COVID-19 related, and report any missing DMR

or other report as soon as possible.

The Temporary Advisory is effective for the same period as the initial Enforcement and Compliance Assurance guidance (effective March 13, 2020) and will continue until the initial guidance is terminated. NPDES permittees facing difficulties with reporting during the COVID-19 pandemic should review the advisory carefully to ensure proper protocol and coding are used to avoid unnecessary violations.

*Please note: This alert contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel.*

**Please click here for additional legal updates from Williams Mullen regarding COVID-19.**

## **Related People**

- Ryan W. Trail ? 803.567.4605 ? Rtrail@williamsmullen.com

## **Related Services**

- Environment & Natural Resources