



STATE OF MISSISSIPPI

Tate Reeves
GOVERNOR

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

Christopher G. Wells
INTERIM EXECUTIVE DIRECTOR

MEMORANDUM

SUBJECT: Updated Guidance to the Regulated Community Regarding Compliance with Regulatory Requirements During the COVID-19 Pandemic

FROM: Chris Wells, Interim Executive Director

TO: All Entities Regulated by MDEQ

DATE: July 20, 2020

INTRODUCTION

On March 14, 2020, Mississippi Governor Tate Reeves issued a Proclamation declaring a state of emergency in the State of Mississippi resulting from the COVID-19 pandemic. In his Proclamation, the Governor directed that, pursuant to Miss. Code Ann. § 33-15-11 (c)(1), provisions of state statutes, rules, regulations, or orders may be temporarily suspended or modified if compliance with such provisions would prevent, hinder, or delay action necessary to cope with the COVID-19 outbreak. The Governor subsequently issued a series of Executive Orders directing government entities and essential businesses to take all reasonable measures to ensure compliance with guidelines set forth by the United States Centers for Disease Control and Prevention (“CDC”) and the Mississippi State Department of Health (“MSDH”) to prevent the spread of COVID-19. Such measures include, but are not limited to, encouraging employees carrying out essential duties to work from home, sending sick employees home, actively encouraging sick employees to stay home, and separating and sending home employees who appear to have respiratory illness symptoms. Based on the Proclamation and the series of Executive Orders, the Mississippi Department of Environmental Quality (“MDEQ”) issued “Guidance to the Regulated Community Regarding Compliance with Regulatory Requirements During the COVID-19 Pandemic” on April 2, 2020. In its guidance, MDEQ recognized “in complying with the Governor’s Orders, facilities regulated by MDEQ may have reduced work forces due to illness, travel restrictions, and social distancing restrictions implemented in compliance with the CDC and MSDH guidelines, and that temporary suspension of deadlines to comply with certain reporting, document submittal, and other regulatory requirements may be necessary.” Thus, MDEQ provided guidance to regulated persons and facilities which may experience temporary noncompliance directly related to the COVID-19 pandemic.

On May 28, 2020, the Governor issued a “safe return order” lifting travel restrictions and allowing all businesses and non-profit entities operating within Mississippi to reopen or remain open subject to certain limitations to minimize person-to-person interactions and associated risk of transmission of COVID-19. (EO # 1492). The Order directs government entities, business entities, and non-profits to continue using work from home or other telework procedures. *Id.* Further, as required in previous Orders, businesses and non-profits are to make reasonable and good faith efforts to comply with CDC and MSDH regulations and guidelines to prevent the spread of COVID-19 including social distancing, sending sick employees home, actively encouraging sick employees to stay home, and separating and sending employees who appear to have respiratory illness symptoms home. The safe return order has been extended and amended several times, and it is anticipated that the Governor may continue to extend and/or amend it. While the Governor’s safe return order lifts travel restrictions and allows all businesses and non-profits to open or reopen, it also continues to require government entities, businesses, and non-profits to follow CDC and MSDH guidelines to prevent the spread of COVID-19 and has been amended to impose specific additional restrictions on certain counties. MDEQ recognizes that compliance with CDC and MSDH guidelines and other Executive Order restrictions may cause the facilities it regulates to continue having reduced work forces; thus, MDEQ provides this updated guidance to regulated persons and facilities which may experience temporary noncompliance directly related to the COVID-19 pandemic.

1. Applicability.

This guidance applies retroactively beginning March 14, 2020, the date the governor entered a Proclamation declaring a state of emergency due to the COVID-19 pandemic. MDEQ will assess the continued need for and scope of this temporary guidance and will update it in the future as necessary. This Memorandum is intended only to provide temporary guidance and does not constitute rule-making as contemplated by the Mississippi Administrative Procedures Act, and as such it does not, and should not be construed to, create any rights, obligations or causes of action.

2. Compliance with all Permit and Regulatory Requirements.

Regulated persons and facilities are expected to take all reasonably practicable steps to operate in compliance with permit terms and conditions and applicable regulatory and statutory requirements including, but not limited to, all applicable air emission, water discharge and waste management limitations. Deviations from such terms and conditions and limitations must continue to be reported to MDEQ per existing requirements. MDEQ will make a case-specific evaluation and exercise appropriate enforcement discretion in addressing non-compliance, including not assessing penalties for such non-compliance, ***where the facility provides adequate documentation that:*** (1) the deviation is attributable to the COVID-19 pandemic; (2) the person or facility took all reasonable and appropriate actions to minimize both the extent and duration of the non-compliance; and (3) the person or facility took reasonably practicable steps to return to compliance as soon as possible. In any event, no person or facility should operate in a manner that creates an acute risk or imminent threat to human health or the environment.

3. Extension of Deadlines.

- A. Permit Renewal Applications. For persons or facilities where operations are adversely impacted by the COVID-19 pandemic, if an application for a permit renewal was due to be submitted between March 14, 2020, and the date of this modified guidance, *such application for permit renewal must be submitted as soon as reasonably possible, but no later than ninety (90) days from the date of this modified MDEQ guidance.* *Beginning on the date of this modified guidance until withdrawal of the guidance, further relief for application submittals will be considered on a case-by-case basis.* Permittees submitting late permit renewal applications in reliance upon this guidance must provide adequate documentation that the delay in submittal is attributable to the COVID-19 pandemic. Any person or facility whose permit expires during the time that this temporary guidance is in effect, or whose permit expires due to a delayed submittal of a renewal application in accordance with this guidance, will be expected to comply with the terms and conditions of such expired permit, as stated in section 2 above, until such time as a new or renewed permit may be issued.
- B. Compliance Directives, Administrative Orders and Agreed Orders. If a Party or Respondent to any Notice of Violation (NOV), Administrative or Agreed Order, or other Compliance Directive from MDEQ is adversely impacted due to COVID-19, MDEQ will consider extensions and/or modifications to the requirements of such NOV, Order or Directive on a case-by-case basis upon receipt of such requests and accompanying information justifying the need for the extension/modification.
- C. All Other Deadlines. Persons or facilities where operations are adversely impacted by the COVID-19 pandemic may request in writing (email is sufficient to your MDEQ contact: (www.mdeq.ms.gov/staff-directory)), on a case-by-case basis, an extension of any of the deadlines specified in their permits or any other applicable statutory or regulatory deadlines. Persons or facilities seeking such extension must provide adequate documentation, as stated in section 2 above, that the extension requested is attributable to, and made necessary by, the COVID-19 pandemic.

4. Certifications and Continuing Education.

MDEQ is aware that certain continuing education training classes required for certification renewals have been cancelled or temporarily suspended due to COVID-19 (e.g., Visible Emissions Evaluation Training and Certification, UST contractor continuing education, wastewater operator training education classes, solid waste facility operator training, etc.). MDEQ will administratively continue certifications that were in good standing as of March 14, 2020, and which expired solely due to the unavailability of classes required to maintain certification as a result of COVID-19. In such circumstances, MDEQ will also grant an extension to meet continuing education requirements until such classes resume. Applications for renewal of certifications where all regulatory requirements for renewal have been met should be submitted to MDEQ for processing as normal.

5. Electronic Submission of Documents

As a measure to protect MDEQ employees by complying with the CDC and MSDH guidelines while sustaining MDEQ services to the public, MDEQ encourages electronic communication with MDEQ staff and electronic submittal of official business documents when possible until withdrawal of this guidance. A directory of MDEQ staff may be found at: www.mdeq.ms.gov/staff-directory.

- A. Permit Applications for the Environmental Permits Division of the Office of Pollution Control (OPC). MDEQ encourages electronic submission of permit applications and associated supporting documents.
 - a. OPC Air and Water Pollution Control permit applications should be submitted at the following link: www.mdeq.ms.gov/electronic-application
Notices of Intent (NOIs) for coverage under Air and/or Water General Permits and associated supporting documents should be submitted to the following link: https://www.mdeq.ms.gov/noi_esubmittals Further instructions are available on those links.
- B. Applications for permits, grants and certifications and compliance and monitoring reports to the Waste Division of OPC and the associated supporting documents should be submitted electronically to the appropriate program management staff where possible. Email addresses and other contact information for program staff may be found at the MDEQ staff directory linked above. For persons that do not know the program contact for the document you are seeking to transmit, you may send your document to: WasteSubmittals@mdeq.ms.gov
- C. Permit Applications for the Office of Land and Water Resources (OLWR). OLWR submissions related to applications for water use and dam safety should be submitted by email to olwrpermitsubmissions@mdeq.ms.gov.
- D. Permit Applications for the Office of Geology (OG). All permit applications for OG should be submitted to the following email address: Mining@mdeq.ms.gov.
- E. Other Submittals. Official documents required by compliance directives, statutes, regulations or permit terms and conditions normally submitted in hard copy format, may be emailed directly to the appropriate MDEQ staff. A directory of MDEQ staff may be found at: www.mdeq.ms.gov/staff-directory.
- F. Public comments. For the duration of this guidance, MDEQ public notices will contain instructions for electronic submittal of public comments and submission of comments in that manner is highly encouraged.

For all documents submitted via email, MDEQ encourages our customers to transmit emails requesting a “return receipt” and that you maintain those receipts for your records. MDEQ continues receiving mail via the U. S. Postal Service and other carriers. ***Within thirty (30)***

days from the date of this guidance, facilities which previously submitted electronic permit applications, NOIs, and related documents which would normally be submitted in hard copy must also submit hard copies of these documents to MDEQ. Henceforth, electronic submittals must be immediately followed by hard copy submittals to MDEQ as would normally be required.

6. Public Hearings

It is the intent of MDEQ to conduct, to the extent possible, currently-scheduled public hearings, as well as all other public hearings which may be scheduled while this temporary guidance is in effect, via virtual/remote access means (e.g. webinars, teleconference, etc.).