

A NACWA WEBINAR

# Legal & Regulatory Considerations for Clean Water Utilities During COVID-19

May 20, 2020 | 2:00 - 3:30 PM ET

50 | NACWA 



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## Clean Water Allies



## Featured Speakers



**Amanda Waters**

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**Fredric Andes**

Partner  
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**Drew Silton**

Principal  
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# **Enforcement Relief & Response Policies**

NACWA Webinar: Legal & Regulatory Considerations  
for Clean Water Utilities During COVID-19

Amanda Waters  
Attorney

AQUALAW

# COVID-19 Enforcement Relief & Response Policies

- ◆ Federal & State Regulatory Guidance
- ◆ Common Themes/Requirements
  - ◆ COVID ≠ free pass for noncompliance
  - ◆ Communicate with regulators early and often
  - ◆ Make good faith/best efforts to comply
  - ◆ Document noncompliance



# Navigating the Regulatory Patchwork

- ◆ Determine which guidance applies
  - ◆ Issue: NPDES permit v. enforcement order requirement
- ◆ NPDES Permit
  - ◆ State with Authorized Program - comply with State Guidance if it exists
  - ◆ MA, NH, NM – EPA Guidance
- ◆ Enforcement Order
  - ◆ Fed – EPA Guidance
  - ◆ Fed/State - both

# Federal Guidance

- 💧 US EPA Guidance

- 💧 COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

- 💧 Frequent Questions About Temporary COVID-19 Enforcement Policy

- 💧 Temporary Advisory for NPDES Reporting in Response to COVID-19 Pandemic

- 💧 US Department of Justice – Collection of Stipulated Penalties

# EPA March 26 Enforcement Guidance

- ♦ OECA Temporary Policy
  - ♦ Applies retroactively to March 13
  - ♦ EPA will provide 7 days notice before termination
- ♦ EPA recognizes potential worker shortages
  - ♦ Illness, travel and social distancing restrictions
- ♦ EPA recognizes this may affect
  - ♦ Facility operations
  - ♦ Availability of key staff and contractors
  - ♦ Ability of labs to test and report in timely manner
  - ♦ Permittee reporting
  - ♦ Milestones in enforcement settlements and decrees
  - ♦ Ability to meet enforceable limitations in permits

# Scope

- ◆ Does NOT apply to State enforcement
  - ◆ States may have different approaches
  - ◆ But EPA policy provides important framework
- ◆ Covers
  - ◆ Civil violations
  - ◆ Routine compliance monitoring & reporting
  - ◆ Settlement Agreement/Consent Decree obligations
- ◆ Exclusions
  - ◆ Criminal issues
  - ◆ Superfund, RCRA, imports (pesticides)

# Conditions Apply

- ◆ EPA will exercise enforcement discretion
  - ◆ For non-compliance covered by temporary policy resulting from COVID-19
  - ◆ If regulated entities take steps outlined in policy
- ◆ When compliance not reasonably practicable
  - ◆ Make best efforts to maximize compliance; minimize duration of noncompliance; make up what you can
  - ◆ Identify
    - ◆ Specific nature and dates of noncompliance
    - ◆ How COVID-19 was the cause
    - ◆ Decision & response actions, including best efforts to comply, steps taken to come into compliance at earliest opportunity
  - ◆ Return to compliance as soon as possible
  - ◆ Document all of the above

# Routine Monitoring & Reporting

- ◆ EPA recognizes potential constraints such as
  - ◆ Routine compliance monitoring, sampling
  - ◆ Lab analysis including sample holding & turnaround times
  - ◆ Training and re-certifications of staff
  - ◆ Reporting or certification of various kinds
- ◆ Use existing procedures to report noncompliance
- ◆ No procedure available or reporting not reasonably practicable, keep information internally & make it available upon request
- ◆ Generally, EPA does not expect to seek penalties if
  - ◆ EPA agrees that COVID-19 was the cause, and
  - ◆ Entity provides supporting documentation upon request

# Routine Monitoring & Reporting

- ◆ Monitoring / Reporting intervals of  $< 3$  months
  - ◆ EPA will not ask permittees to play “catch up”
- ◆ Monitoring / Reporting intervals of  $> 3$  months
  - ◆ Ex: Bi-annual or annual reports
  - ◆ EPA expects facility “to take reasonable measures to resume compliance activities as soon as possible”
  - ◆ Conduct late monitoring, submit late reports

# Training/Certifications

- ♦ Many of these classes are on-line
  - ♦ These classes “should not be affected”
- ♦ These are generally STATE requirements
- ♦ “If practicable” EPA wants training to continue
- ♦ If not, “it is more important to keep experienced, trained operators on the job, even if a training or certification is missed”



# Signatures

- ◆ Submission normally requires “wet” signature - EPA will accept alternative signature
  - ◆ Either digital or other electronic form
- ◆ EPA will also accept e-mail submission
  - ◆ Even if paper original is normally required
  - ◆ But “strongly” encourages e-reporting
- ◆ Submit with unapproved signature; follow up with one-pager from authorized signer

# Settlement Agreements

- ◆ If you have Admin Order/ Settlement Agreement
  - ◆ Follow notice procedures in agreement
  - ◆ Include Specific nature and dates of noncompliance, how COVID-19 was the cause, decision & response actions taken to come into compliance at earliest opportunity
- ◆ EPA will not seek penalties for noncompliance
  - ◆ For routine compliance monitoring, etc.
  - ◆ But EPA may reach out to discuss adjustments to plans

# Facility Operations

- ◆ EPA's big picture expectations
  - ◆ Continue to operate facility in safe manner that protects public health and the environment
- ◆ Contact appropriate authority
  - ◆ Implementing authority
  - ◆ If COVID-19 “may create an acute risk or an imminent threat to human health or the environment”
- ◆ EPA will coordinate with State
  - ◆ Discuss mitigation; determine if state has provision in place to address situation

# System Failures

- ◆ If facility has failure
  - ◆ Of air emission control, wastewater, waste treatment, other equipment
  - ◆ That may result in exceedances of limits
- ◆ Notify Implementing Authority
  - ◆ As quickly as possible
  - ◆ Include info on pollutants emitted, discharged, etc.
  - ◆ Compare with applicable limitation
  - ◆ Include expected duration & timing of exceedance, etc.

# Enforcement

[Enforcement Home](#)[Enforcement Basics](#)[Air Enforcement](#)[Water Enforcement](#)[Waste, Chemical and  
Cleanup Enforcement](#)[Criminal Enforcement](#)[Enforcement at Federal  
Facilities](#)[Data and Results](#)[Policy, Guidance and  
Publications](#)

## Frequent Questions About the Temporary COVID-19 Enforcement Policy

*This webpage contains answers to some frequently asked questions (FAQs) about the March 26th Temporary COVID-19 Enforcement Policy. We will be adding to the webpage as more FAQs become available. So please continue to check this webpage for the latest version.*

On this page

- General FAQs
  - [Why did the EPA issue the Temporary COVID-19 Enforcement](#)

### Related Resources

- [EPA's Coronavirus Page](#)
- [EPA's Frequent Questions about Coronavirus](#)
- [Enforcement Policy, Guidance and](#)

# Response to EPA Policy

- Media Attention
- April 16- NGO Petition for Emergency Rulemaking
- May 13 – Litigation file by AGs of 9 States
  - EPA Lacks Authority
  - California, Illinois, Maryland, Michigan, Minnesota, New York, Oregon, Virginia & Vermont

The New York Times

*E.P.A., Citing Coronavirus, Drastically Relaxes Rules for Polluters*



One former senior E.P.A. official called the move “a nationwide waiver of environmental rules.” David J. Phillip/Associated Press

## **EPA Temporary Advisory: NPDES Reporting**

- ◆ Applies where COVID-19 impacts an NPDES permittee's ability to perform required monitoring, sampling and reporting
- ◆ Directs states and EPA Regions to set up codes that will not automatically generate a violation
- ◆ Directs states and EPA Regions to advise permittees about proper reporting protocol
- ◆ Provides recommendations to states and EPA Regions on tracking NPDES reporting to ensure consistent national data
- ◆ The objective is to use a code consistently to make the data more easily retrievable for follow-up if needed

# US DOJ: Collection of Stipulated Penalties

- ♦ EPA Guidance - intention to coordinate with DOJ “to exercise enforcement discretion with regard to stipulated penalties”
- ♦ DOJ offering payment deferral option on an individualized basis
- ♦ No policy to rely on to justify payment deferral – contact DOJ to determine options

Subject: Debt Collection Activities During the COVID-19 Pandemic

To mitigate the financial impact of the coronavirus (COVID-19) pandemic, effective immediately, the Department of Justice (DOJ) is suspending its collection through May 31, 2020 of a stipulated penalty owed in accordance with a demand that was sent under this consent decree. This voluntary suspension is subject to extension, depending upon future circumstances or other administrative action.

Nonetheless, if you are prepared to pay at this time, let us know by emailing me and the DOJ attorney with whom you worked on this case. We will arrange for payment instructions to be sent to you, unless you have instructions used for previous payment under this consent decree. Otherwise, the government will advise you before May 31, 2020 whether the government’s voluntary suspension of collection of this debt will continue beyond May 31 or expire on that date.



# Final Thoughts/Questions

## **COVID-19 Enforcement Relief & Response Policies**

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# To Force Majeure or Not to Force Majeure? Claiming a COVID-19 Defense

Fred Andes

Barnes & Thornburg

NACWA COVID-19 Webinar

May 20, 2020

# COVID-19 Defense Claim Issues

- What is a “Force Majeure”?
- What Does an FM Claim Do for You?
- When Can You Claim It?
- How Can You Succeed – or Fail - in Making This Claim?
- What Do You Do if You Can’t Make a Force Majeure Claim?
- How Might EPA or State Respond?
- Important Things to Remember

# What Is a Force Majeure?

- “Force majeure” from French Napoleonic Code – literally “superior strength”
- An unexpected circumstance that prevents you from fulfilling a legal obligation
- Example definition in CWA consent decree: “any event arising from causes beyond the control of Defendants, of any entity controlled by Defendants, or of Defendants’ consultants or contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Defendants’ best efforts to fulfill the obligation”

# What Does Claiming Force Majeure Do for You?

- Example decree language: If Plaintiffs agree that the delay or anticipated delay is attributable to a Force Majeure event, the time for performance of the obligations under this Consent Decree that are affected by the Force Majeure event will be extended by Plaintiffs, for such time as is necessary to complete those obligations.
- ALSO: No liability for stipulated penalties under the decree for noncompliance with the requirement that is the subject of the force majeure claim

## When Can You Claim It?

- Example decree language: If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a Force Majeure event, Defendants shall provide notice to plaintiffs orally or by electronic or facsimile transmission within 72 hours of when Defendants first knew that the event might cause a delay

## Wait, There's More...

- Within seven (7) days thereafter, Defendants shall provide in writing to Plaintiffs an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Defendants' rationale for attributing such delay to a Force Majeure event if assertion of such a claim is intended; and a statement as to whether, in the opinion of Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. Defendants shall include with any notice all available documentation supporting the claim that the delay was attributable to a Force Majeure event.

## How Can You Succeed in Making This Claim?

- Example decree language: “The requirement that Defendants exercise ‘best efforts to fulfill the obligation’ includes using best efforts to anticipate any potential Force Majeure event and best efforts to address the effects of any such event as it is occurring, and after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible.”



## How Can You Fail in Making This Claim?

- Example decree language: “Force Majeure’ does not include Defendants’ financial inability to perform any obligation under this Consent Decree. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and/or changed financial circumstances will not, in any event, be considered Force Majeure events. Application for construction grants, State Revolving Loan Funds, or any other grants or loans, or delays caused by inadequate facility planning or plans on the part of Defendants do not constitute Force Majeure events.”

# What If You Can't Make a Force Majeure Claim?

- Most admin orders – no FM provision
- Most NPDES permits – no FM provision
- BUT there may be other provisions that you can use to obtain relief
- If not, then follow the pandemic compliance/enforcement policies issued by your permitting agency

# What Permit Provisions Could I Possibly Use?

- READ THE BOILERPLATE
- “The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.”
- “The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility.”
- Do you have an upset? 40 CFR 122.41(n)
- Do you have a bypass? An anticipated bypass? 40 CFR 122.41(m)

## How Might EPA or State Respond?

- Grant claim and extend time for compliance
- Grant claim and eliminate requirement for compliance? DIFFICULT
- Deny claim – but you can take that to dispute resolution process
- May deny claim but decide not to assess stip
- Permit defense claims – may excuse noncompliance, such as by giving approval for an anticipated bypass
- Permit violations – may exercise enforcement discretion and decide not to take action, or decide to take action but not seek penalties

# DOJ Response to Early Claim

- Because X's current notice remains speculative about the impacts that COVID-19 may have on any Consent Decree obligations, the United States must defer judgment on X's force majeure claim at this time. The United States' decision to defer judgment should not be construed as acceptance of any potential noncompliance with the Decree. For a force majeure claim to be ripe for consideration, X should identify particular obligation(s) that will be delayed by the asserted force majeure event, along with the specific information required by the force majeure section of the Decree. This may well require multiple notices, depending on the deadlines for different obligations and the effect of the event on those deadlines. Due to the uncertainty surrounding the COVID-19 public health emergency, we understand that X may not have complete information at this time, but X should provide additional information in accordance with Consent Decree Paragraphs Y and Z as more information becomes available. We look forward to receiving follow-up notifications with periodic updates.

# **MOST IMPORTANT TO REMEMBER**

- DOCUMENT THE SITUATION
- COMMUNICATE WITH AGENCIES

# Questions?

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# Legal & Regulatory Considerations for Clean Water Utilities During COVID-19

## Compliance During a Pandemic

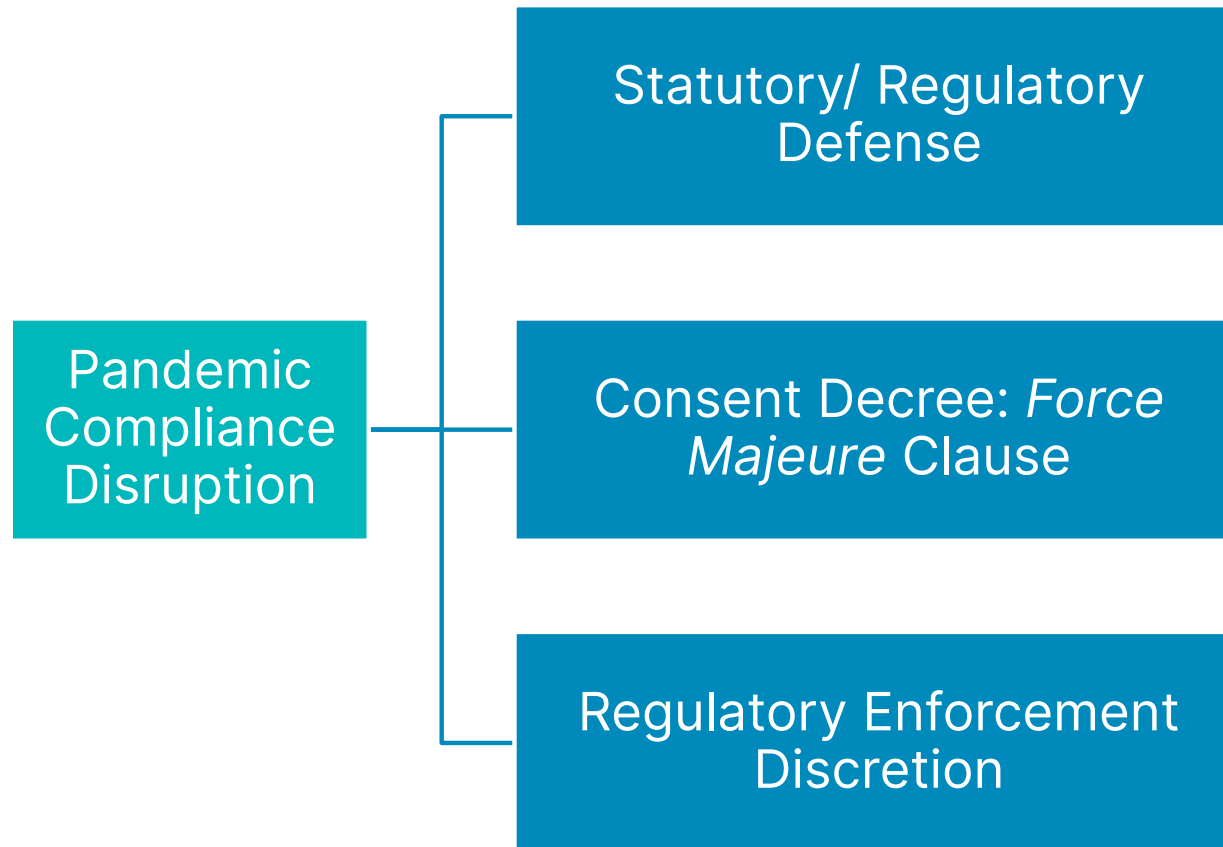
J. Tom Boer

National Association of Clean Water Agencies

May 19, 2020

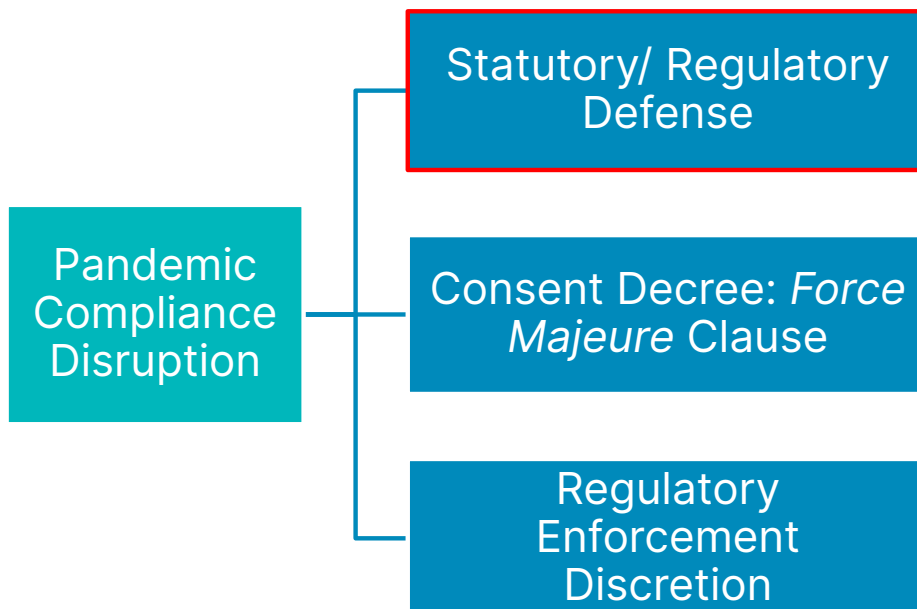


# Compliance Disruptions Due to Pandemic



# Compliance Disruptions Due to Pandemic

## Statutory Safe Harbor?

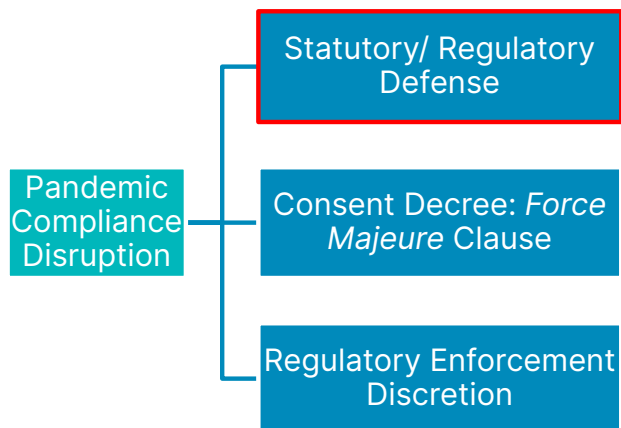


33 U.S.C. § 1321 (a)(12)

“(12) ‘act of God’ means an act occasioned by an unanticipated grave natural disaster;”

# Compliance Disruptions Due to Pandemic

## Regulatory Safe Harbor?



### 40 C.F.R. § 122.41(n) Upset –

(1) **Definition.** *Upset* means an exceptional incident in which there is unintentional and temporary noncompliance with technology based [permit effluent limitations](#) because of factors beyond the reasonable control of the permittee. ...

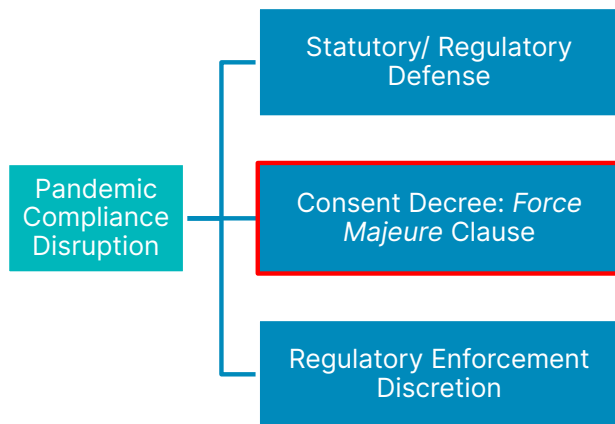
(2) **Effect of an upset.** An [upset](#) constitutes an affirmative defense to an action brought for noncompliance ...

(3) **Conditions necessary for a demonstration of upset.** A permittee who wishes to establish the affirmative defense of [upset](#) shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (i) ... permittee can identify the cause(s) of the [upset](#);
- (ii) The permitted [facility](#) was at the time being properly operated; and
- (iii) The permittee submitted notice of the [upset](#) ...
- (iv) The permittee complied with any remedial measures required ...

# Compliance Disruptions Due to Pandemic

## To Force Majeure Or Not?

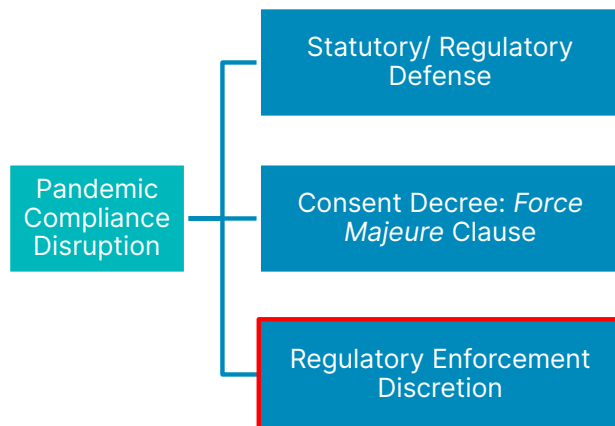


## XX. FORCE MAJEURE

200. A “force majeure event” is any event beyond the control of a Defendant, its agents and contractors, or any entity controlled by a Defendant that delays the performance of any Work under this Consent Decree despite the Defendant’s best efforts to fulfill the obligation to do that Work. “Best efforts” includes anticipating reasonably foreseeable force majeure events and taking appropriate preventive actions, if they exist, before a force majeure event occurs. “Best efforts” also includes addressing the effects of any force majeure event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the extent reasonably practicable. “Force Majeure” does not include a Defendant’s financial inability to perform any obligation under this Consent Decree.

# Compliance Disruptions Due to Pandemic

## Enforcement Discretion: California



- Specific Water Board order, regulation, or permit, or other requirement that cannot be timely met
- Inconsistent COVID-19 directive or guideline
- An explanation of why the responsible entity cannot timely meet the Water Board order or requirement, and
- Any action that the entity will take in lieu of complying with the specific Water Board order or requirement

# State Agency Guidance: Ask First or Ask Forgiveness?

## California EPA: Enforcement Guidance

### CalEPA Issues Statement on Compliance with Regulatory Requirements During the COVID-19 Emergency

For Immediate Release:

April 15, 2020

Media Contacts:

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CalEPA's Boards Departments and Office: [CalEPA Newsroom](#)

SACRAMENTO – The California Environmental Protection Agency (CalEPA) is committed to continuing to safeguard public health, safety, and the environment during the COVID-19 pandemic. Each of CalEPA's boards, departments, and offices is focused on ensuring continuity of operations during this difficult time.

Controlling pollution in communities with high rates of respiratory disease and multiple environmental burdens remains a priority for CalEPA – especially given recent studies that suggest a correlation between these factors and COVID-19 susceptibility. Accordingly, CalEPA will continue to respond, investigate, and – when necessary – take action on complaints related to environmental non-compliance. CalEPA will also fill any enforcement gaps left by the U.S. EPA's decision to reduce environmental oversight. We will also maintain our capacity to respond to emergencies. The ongoing clean-up of contaminated sites will be prioritized to abate or prevent an imminent threat to public health or the environment, while ensuring worker safety.

As we continue our mission to protect public health and the environment, CalEPA also recognizes that some regulated entities may need additional compliance assistance as a result of the COVID-19 pandemic. Specific time-delimited remedies, such as the extension of deadlines, may be warranted under clearly articulated circumstances, but regulated entities that cannot meet a specific regulatory requirement due to emergency government directives or a specific hardship must contact the appropriate CalEPA board, department or office before falling out of compliance. CalEPA boards, departments, and offices will consider such requests in an expedited fashion. **These time-limited and specific requests that define the hardship must be directed to the specific CalEPA board, department or office as early as possible.** Due to the high number of staff who are teleworking, email is the most expeditious way to contact the boards, departments and offices.

- CalEPA will continue to enforce and “will also fill any enforcement gaps left by the U.S. EPA’s decision to reduce environmental oversight.”
- Recognizes potential compliance difficulties, but directs regulated entities to contact California regulators “before falling out of compliance.”

# State Agency Guidance: Ask First or Ask Forgiveness? California: State Water Board Compliance Guidance

## Water Boards COVID-19 Updates

### Compliance with Water Board Requirements During the Coronavirus 2019 (COVID-19) Emergency

The State Water Resources Control Board and the nine California Regional Water Quality Control Boards (the Water Boards) are continuing their efforts to protect public health, safety, and the environment consistent with all federal, state, and local public health directives and guidelines related to COVID-19.

Please be aware that timely compliance by the regulated community with all Water Board orders and other requirements (including regulations, permits, contractual obligations, primacy delegations, and funding conditions) is generally considered to be an essential function during the COVID-19 response. As a result, the Water Boards consider compliance with board-established orders and other requirements to be within the essential activities, essential governmental functions, or comparable exceptions to shelter-in-place directives provided by local public health officials.

If there is a specific Water Board order or requirement that cannot be timely met because it would be inconsistent with current governmental directives or guidelines related to COVID-19, the entity responsible for compliance with the Water Board order or requirement must notify the applicable Water Board immediately. The notification shall be via electronic mail to the applicable Water Board using the appropriate email address identified below, and shall include:

- the specific Water Board order, regulation, permit, or other requirement that cannot be timely met,
- the inconsistent COVID-19 directive or guideline,
- an explanation of why the responsible entity cannot timely meet the Water Board order or requirement, and
- any action that the entity will take in lieu of complying with the specific Water Board order or requirement.

Water Board staff will do their best to respond within 24/48 hours.

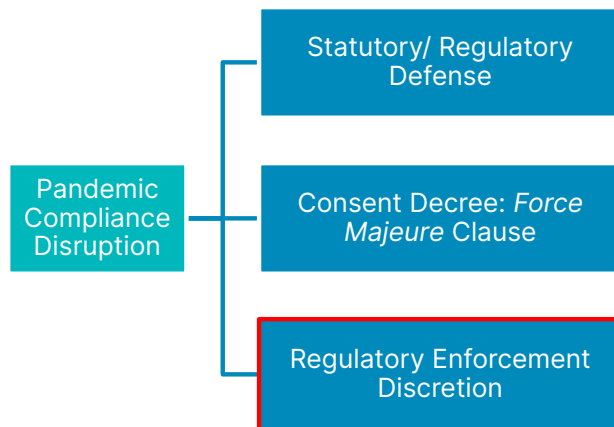
Please note that more specific directions for certain types of Water Board orders and other requirements may also be provided.

[https://www.waterboards.ca.gov/resources/covid-19\\_updates/](https://www.waterboards.ca.gov/resources/covid-19_updates/)

- Regional Water Boards have received 345 requests for extensions in first month
- Staff have responded to 208 of these requests. Remainder are under review
- Approximately 80 percent of requests have been accepted. Most of the approved requests relate to extensions to monitoring and reporting deadlines
- Requests more likely to be denied if pertaining to drinking water-related compliance and/or situations where a delay could cause or contribute to an imminent and substantial endangerment

# Compliance Disruptions Due to Pandemic

## Enforcement Discretion: March 31 EPA NPDES Guidance



- Encourages permittees to “continue to make every effort to comply with their environmental compliance obligations.”
- Permittees advised to report data for the monitoring period (even if incomplete) unless such reporting is not possible.
- EPA created a specific reporting code for when data is unavailable due to pandemic.
- Outlines process for emergency reporting waivers where permittees’ unable to meet permit terms.

Table 2 – Example Scenarios Created by COVID-19 Pandemic	
Scenario	Recommended Response by the Permittee
1) A permittee can report, but not electronically	Request a waiver from electronic reporting and report on paper
2) A permittee is not able to sample or monitor, but can report electronically	Report as required; use applicable NODI code where needed; include comment on DMR form
3) A laboratory is not available to complete analyses of samples	Report as required; use applicable NODI code where needed; include comment on DMR form
4) A permittee is not able to sample, monitor and report	Follow criteria set forth in the Temporary Policy and report when possible, which might include use of NODI codes with necessary comments and attachments.
5) No authorized official is available to sign a required form or report	See above where a permittee is not able to report. If a wet-ink signature is required for processing signatory requests, it should be sent in accordance with existing procedures with a scanned version sent to the appropriate authorized NPDES Program or EPA Region to expedite processing.



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# COVID-19: Loose Ends and Financial Consequences

NACWA

Drew Silton | May 20, 2020



# Enforcement Discretion Policies



§ 309



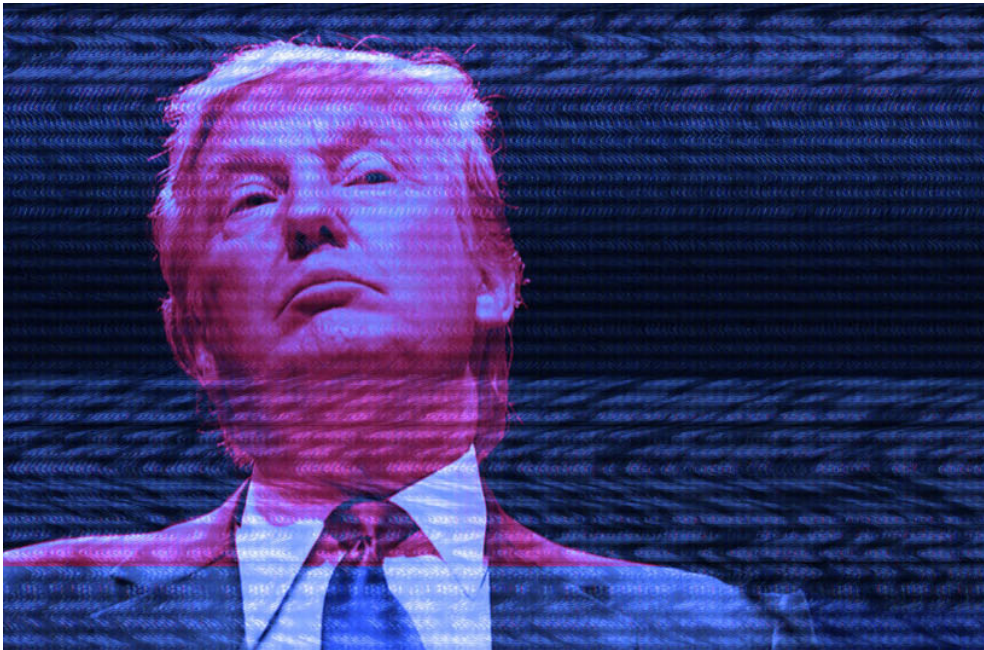
...and many more!

§ 402(b)(7)

# The Policy “Gap”: Section 505



# NGOs Aren't Pleased



## **Trump is taking advantage of an unprecedented public health crisis**

**Trump's EPA is creating new public health risks by rolling back fuel efficiency standards and allowing industries to stop monitoring and reporting dangerous air and water pollution. We're going to court to stop them, but we need your help.**

**GIVE MONTHLY**

Source: <https://www.nrdc.org/> (accessed 5/17/20)



# Where the Risks Lie

- The good news:
  - Other, higher priority targets
  - High penalties unlikely
- Where things get dicey:
  - Disagreement over when pandemic/need for regulatory relief is “over”
  - Subsequent waves and “fatigue”
  - Lags in returning to compliance

# Cutting off the Citizen Suit

*Gwaltney* → Come into compliance

- Made more complicated by COVID
- Weigh benefits against risks

Diligent prosecution → EPA or state goes after you

- Timing may be difficult
- Reluctance to undermine policies

# Protecting Your Utility

- Develop plans for coming back into compliance
- Engage with interested NGOs early
- Keep apprised of NGO interest





# The Economy and Your Consent Decree

## Economic Indicators

Name	Value
Advance Real Retail and Food Services Sales	<b>-15.77993</b> Percent Change Apr 2020
All Employees, Total Nonfarm	<b>-20537</b> Change, Thousands of Persons Apr 2020
Consumer Price Index for All Urban Consumers: All Items in U.S. City Average	<b>0.37616</b> Percent Change from Year Ago Apr 2020
Industrial Production Index	<b>-11.24770</b> Percent Change Apr 2020
Real Disposable Personal Income	<b>-1.73712</b> Continuously Compounded Rate of Change Mar 2020
Real Gross Domestic Product	<b>-4.90127</b> Continuously Compounded Annual Rate of Change Q1 2020
Unemployment Rate	<b>14.7</b> Percent Apr 2020

Source: <https://research.stlouisfed.org/dashboard/49765>

# Force Majeure? Check Your CD

41. A “force majeure event” is any event beyond the control of Elkhart, its contractors, or any entity controlled by Elkhart that delays the performance of any obligation under this Consent Decree despite Elkhart’s best efforts to fulfill the obligation. “Best efforts” includes anticipating any reasonably foreseeable force majeure events and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. “Force Majeure” does not include Elkhart’s financial inability to perform any obligation under this Consent Decree.

49. “Force Majeure” for the purposes of this Consent Decree is defined as an event beyond the control of WSSC or the control of any entity controlled by WSSC, including its agents, consultants and contractors, which delays or prevents the performance of any obligation under this Consent Decree despite WSSC’s best efforts to fulfill the obligation. “Best efforts” include anticipating a reasonably foreseeable Force Majeure event and addressing the effects of any such event (a) as it is occurring, and (b) after it has occurred, to prevent or minimize any resulting delay to the extent reasonably possible. Unanticipated or increased costs or expenses associated with implementation of this Consent Decree and changed financial circumstances shall not, in any event, be considered “Force Majeure” events. In

# Alternatives and Challenges

- DOJ's resistance to modifications on financial grounds
- Different contexts for engaging with DOJ
- Setting thresholds to warrant modification
- The COVID-19/economic unknowns





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# Q & A

UPCOMING 2020

## Conferences & Events

### Strategic Communications: H2O

#### Virtual Event

June 1 – June 2, 2020

### Dealing with Disruption: Operationalizing Resilience in the Water Sector Webinar

#### Part 4

June 3, 2020

### Hot Topics in Clean Water Law

#### Webinar: Part 2

June 10, 2020

### Hot Topics in Clean Water Law

#### Webinar: Part 3

September 16, 2020

### 2020 National Clean Water Law & Enforcement Seminar

Charleston SC

November 18 - November 20, 2020

Learn More and Register at [www.nacwa.org/events](http://www.nacwa.org/events)



# NACWA's strength is in our members.

NACWA is the nation's recognized leader in clean water advocacy for public utilities, made possible through the collective voice of our members.

Experience the value in membership through...

- Legislative, regulatory, legal, and communications information and analysis.
- Peer-to-peer resources exchange and support.
- Interactive webinars and events.
- Recognition for your clean water utility's achievements through our national awards programs.

Learn more at [nacwa.org/join](https://nacwa.org/join).