

Chris Jahn
President & CEO



March 20, 2020

The Honorable Andrew Wheeler
Administrator
United States Environmental Protection Agency

Dear Mr. Administrator:

On behalf of the member companies of the American Chemistry Council, I request that the appropriate Environmental Protection Agency (EPA) enforcement authorities at the national and regional level be provided guidance on enforcement discretion in addressing potential violations of any time-determined regulatory requirements due to the ongoing coronavirus crisis. In some cases, compliance requirements might be altered to recognize the inherent difficulties in meeting the requirements with a work force that is largely teleworking.

Several examples highlight the need for such enforcement discretion.

Many companies have already instituted strict telework policies for their corporate staffs to promote social distancing. Operations staff have also been instructed to limit contact with persons outside plants, to limit the opportunities for spread of the coronavirus, consistent with the guidance provided by public health officials. These limitations may impact companies that face requirements for agency or agency contractor inspections, witness personnel, or instrument calibration. The performance of these activities requires access to the site where member companies are attempting to limit potential exposure following guidance from Centers for Disease Control, states, or local health departments.

Regulatory requirements like the Risk Management Plan (RMP) under the Clean Air Act (CAA) mandate process hazard assessments (PHA) every 5 years. With the coronavirus restrictions, corporate personnel may not be able to travel to facilities to conduct the PHA on time, as required by the regulation

Many companies employ third parties to conduct routine compliance testing such as stack testing under the CAA or discharge monitoring and laboratory analysis under existing NPDES programs. These operations and required staff may be hampered or delayed by travel or other restrictions implemented to comply with health departments advice or government declarations. These restrictions may also extend the time required to conduct this testing.

Similarly, export notifications under section 12(b) of the Toxic Substances Control Act must be made within 7 days of forming the intent to export the chemical. Yet corporate policies – again consistent with the guidance provided by public health officials – may limit the ability of corporate employees to travel to obtain necessary signatures certifying compliance, or complete the notices within the timeframe allowed by regulation. These examples are but two across the wide-range of EPA regulatory requirements, compliance with which may be affected.

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We strongly recommend that you direct EPA enforcement authorities to exercise their enforcement discretion with respect to regulatory compliance that may be affected by efforts to limit the spread of the coronavirus. In the alternative, we believe the Agency should consider temporary, alternative means of compliance (e.g., such as email deliveries of applicable notices, to be followed by regular notification requirements as soon as practicable thereafter).

In addition, ACC believes that a broad extension (90 to 180 days) of compliance deadlines that do not impact public health or safety should be considered. It would be particularly helpful if EPA would provide guidance to the States to consider similar extensions, particularly in programs (like remediation) that are subject to both federal and State jurisdiction.

We very much appreciate EPA's leadership in responding to the coronavirus. Enforcement discretion, and temporary alternative compliance means, are an appropriate, common sense response to ensure that the regulated community continues to meet its regulatory obligations in the most practical way possible.

Please let me know if ACC or our members can be of any assistance.

Sincerely,



Christopher Jahn
President and Chief Executive Officer

cc: S. Bodine (OECA)
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