



RE: COVID-19 caused Non-Compliance Concerns, No Action Assurance Memorandum

To Whom It May Concern,

Where the National Emergency and Federal, State, or municipal laws, regulations, or recommended guidance for at-risk individuals are still an evolving situation, the Alaska Department of Environmental Conservation (DEC or the Department) remains committed to protecting human health and the environment. In certain instances, such as, but not limited to state-only required stack testing or visible emissions observation certification requirements, the Department recognizes that guidance on protecting an individual's health or well-being may conflict with requirements for permit compliance.

Where authority to issue waivers for Non-Compliance with Federally enforceable conditions or stack testing requirements for rules under 40 CFR 60 and 63 remain subject to EPA approval, DEC retains certain discretionary authority with respect to enforcement and will consider such force majeure or other National Emergencies in the context of issued guidance for reasonable precautions to prevent the spread of COVID-19 or in protection of at-risk individuals.

The Department understands that certain permit conditions may take a necessary back seat to guidance on COVID-19. Until July 1, 2020 – please, continue to seek compliance with all permit conditions to the extent that they do not cause an increased risk or contravene guidance on COVID-19. The Department issues this as a No Action Assurance Memorandum on enforcement for qualifying events where compliance with permit requirements would contravene guidance on COVID-19.

As an example, where travel for certification requirements is not recommended, continue to observe requirements for monitoring, even if you do so after a certification has lapsed. Submit as required under your applicable permit condition all non-compliance events with proper DEC Notification forms for Permit Deviations. Include with your notification any cause or guidance pertinent to the non-compliance with certification under 18 AAC 50.205.

DEC is communicating with Alaska Environmental Resources (AER) on providing an additional stack test certification course in Anchorage around the middle of June 2020 in the event that there is a need to train and certify individuals unable to attend other locations as regularly scheduled. For questions on scheduling and currently offered trainings or scheduling needs to comply with the Municipality of Anchorage's limit on mass gatherings, please contact Shawna Popovici with AER at (907) 230-4325 or shawna.popovici@aer-control.com. In case of further restrictions/delays – we will continue to examine contingency options.

For stack testing requirements, the Department has limited authority to issue waivers for delayed test requirements. Depending on the underlying requirement, approval from the U.S. Environmental Protection Agency may be required. The Department is communicating with the EPA to ensure we remain up to date with current guidance or exemption criteria. We intend to be no more stringent than EPA, but – to date, cannot offer exemptions, extensions, or assurances for enforcement discretion where we lack authority to do so. We intend to use what discretion we have for credibly qualifying circumstances and will follow the lead of EPA, however – this process may take some time and extend well past the date of required compliance.

In the event that guidance on travel restrictions, social distancing, quarantine or isolation make compliance by July 1, 2020 difficult, the Department may extend this No Action Assurance Memorandum for qualifying events documented under the required ADEC Notification or Permit Deviation process.

For other questions, please feel free to reach out to us through your regularly assigned inspector. If you have questions about who that is, please see our Department website at <http://dec.alaska.gov/air/air-compliance/contacts/> or contact your regional office compliance supervisor:

Tom Turner – Anchorage
Tom.turner@alaska.gov
907.269.8123

Moses Coss – Fairbanks
moses.coss@alaska.gov
907.451.2163

Denise Wiltse - Juneau
denise.wiltse@alaska.gov
907.465.5278

Protection of public health and the environment remain the Department's focus during this period of national and state emergency. As the situation continues to evolve, the Department may issue additional guidance to address further questions or situations that arise related to air quality requirements.

Sincerely,



Jason Olds
Air Quality, Compliance
Program Manager