

Summary of MDEQ Guidance Regarding Compliance with Regulatory Requirements During COVID-19 Pandemic

On April 2, 2020, the Mississippi Department of Environmental Quality (“MDEQ”) issued a temporary guidance memorandum to all entities regulated by the MDEQ to address the effects of the COVID-19 pandemic.¹

Applicability: The MDEQ Guidance Memorandum applies retroactively to March 14, 2020 and will be assessed and updated as circumstances warrant. The Memorandum “should not be construed to create any rights, obligations or causes of action.”

Compliance with All Permits and Regulations is Expected: Entities are expected to continue complying with all permits, regulations, and statutes, and to continue reporting deviations to MDEQ. Entities must continue to make every effort to protect human health and the environment. MDEQ will make case-by-case determinations on whether to apply leniency in enforcement, however, where the affected entity can show noncompliance is due to the pandemic and the entity is reasonably attempting to comply with requirements.

Extension of Deadlines and Other Requirements: The Memorandum provides for extending certain deadlines. Permit Renewal Applications due between March 14, 2020 and the date MDEQ withdraws the Guidance may be submitted as late as ninety (90) days from the date the Guidance is withdrawn if the delay is provably attributable to the pandemic. Permittees are expected to comply with the terms and conditions of the expired permit until a new or renewed permit is issued. Extensions and/or modifications to existing Notices of Violation or Administrative or Agreed Orders will be considered on a case-by-case basis where affected entities can show adverse impact related to COVID-19. MDEQ will automatically administratively continue certifications that were in good standing as of March 14, 2020 and which expired solely due to the pandemic-related cancellation of classes required to maintain certification. Where all requirements for renewal have been met, applications for renewal should be submitted to MDEQ as normal. Finally, where the operations of persons or facilities are adversely impacted by the COVID-19 pandemic, written requests (emails to your MDEQ contact are sufficient) for extensions of other deadlines will be considered on a case-by-case basis.

Electronic Submission of Documents. The Guidance reminds regulated entities that MDEQ encourages electronic submittals of official business documents when possible and provides email links for submittal of permit applications to the various MDEQ offices. Within thirty (30) days of the expiration of the Guidance, facilities which electronically submitted permit

¹ The full text of the Guidance Memorandum may be found at <http://www.mdeq.ms.gov/wp-content/uploads/2020/04/COVID-19-MDEQ-Guidance-Document.pdf>

applications, NOI's, and related documents which would normally be submitted in hard copy must also submit hard copies to MDEQ.

Public Hearings. MDEQ intends, to the extent possible, to conduct “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, teleconferences, etc.).”

Interaction with EPA Rules, Regulations and Standards. Pursuant to Miss. Code Ann. § 49-17-34(2), MDEQ is prohibited from exceeding the requirements of federal statutes and federal regulations, standards, criteria and guidance relating to environmental matters. Consistent with this restriction, the MDEQ Guidance is largely in line with the EPA's COVID-19 memorandum, dated March 26, 2020, which similarly advises regulated entities that they should take all practicable steps to continue compliance with all applicable permits, regulations, and statutes, and that they should be prepared to document how COVID-19 was the cause of any noncompliance.²

² The full text of the EPA memorandum may be found at <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>