



South Coast Air Quality Management District

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ADVISORY NOTICE

April 15, 2020

Enforcement Discretion to Help Address Impacts of COVID-19

I. Introduction

South Coast AQMD recognizes that the ongoing COVID-19 crisis has created significant burdens on residents, regulated entities, and local communities across the region. This agency seeks to do its part to address administrative regulatory challenges in a responsible manner that continues protection of public health and safety.

Regulated entities, however, should make every effort to comply with all applicable air pollution control requirements, including, but not limited to, South Coast AQMD rules, permits, and hearing board orders.

This document has been created after careful consideration of the need for temporary relief and our important primary mission of reducing air pollution and protecting public health for all communities, and especially for disadvantaged and vulnerable residents. South Coast AQMD will exercise limited enforcement discretion, as detailed below, on a temporary basis during this crisis for non-emissions-related requirements provided certain provisions are met. An owner or operator must submit a request for limited extensions of certain permitting, testing, certification, and reporting/submission deadlines deemed administrative in nature. All other requests will be evaluated on a case-by-case basis.

This notice will apply retroactively beginning on March 12, 2020. It may be modified, superseded, or withdrawn at any time, without notice, at the sole discretion of the Executive Officer. Unless granted enforcement discretion through the procedures set forth in Part II or Part III below, all applicable legal requirements for regulated entities remain in full force and effect.

II. Temporary Relief from Certain Administrative Requirements

In order to assist the regulated community during the COVID-19 crisis, South Coast AQMD will exercise enforcement discretion to extend administrative deadlines that fall within the period of March 12, 2020 through May 11, 2020 (hereinafter, the "Effective Period"). This is intended to be a relatively simple, straightforward process that will not overly burden entities seeking relief.

Facilities requesting enforcement discretion must submit a written request that:

- (1) Identifies the specific date of any deadline that cannot be met, including any relevant rule provisions, permit conditions, or other requirements relevant to that deadline;
- (2) Briefly states how COVID-19 and/or any applicable public health directive or guidance will prevent compliance with the deadline, despite best efforts; and
- (3) Is accompanied by a supporting document, if any exists, that clearly demonstrates the inability to comply – such as a letter from a third-party contractor advising of delays due to workforce limitations caused by the pandemic, or an order from a government official prohibiting certain necessary activities.

Unless otherwise noted below, the exercise of enforcement discretion is conditioned upon the timely submittal of the request, as well as the request being complete and consistent with the guidance provided in this document. Extension requests must be submitted prior to the deadline at issue (or by April 22, 2020, if the deadline has already passed as of the issuance of this notice), and extensions granted under this provision will start from the original deadline for which the extension was sought. This request must be submitted via e-mail to EmergencyRelief@aqmd.gov.

A. Permit Applications and Equipment Installations/Upgrades

Permit applications for Title V operating permits should still be submitted prior to the applicable renewal deadlines. For Permits to Construct that have already been issued and are approaching expiration, South Coast AQMD will attempt to accommodate delays caused by COVID-19. Applicants should contact the South Coast AQMD permit engineer listed on their Permits to Construct to request an extension pursuant to Rule 205.

An extension request may also be submitted for installations of equipment and completion of construction activities for building enclosures required to be installed pursuant to Regulation XI and/or Regulation XIV during the Effective Period. For pollution control equipment required to be installed or upgraded due to rule amendments, such as Rule 1147 and Rule 1469, the deadlines to submit permit applications falling within the Effective Period may be extended for 60 days. For these rule-related deadlines, requests for extensions should be submitted via e-mail to EmergencyRelief@aqmd.gov.

B. Source Tests and Calibration

Owners or operators are encouraged to continue submitting source test protocols and attempting to complete source tests by previously-required deadlines. Staff is aware, however, of the challenges that many facilities have encountered in attempting to retain source test companies and otherwise having this type of onsite testing performed safely. Upon a facility making the requisite showing described above, therefore, all source test-related deadlines that occur during the Effective Period may be extended for 60 days. Facilities that have contributed to elevated levels of toxic air contaminants as demonstrated through ambient air monitoring or that have caused a public nuisance pursuant to Rule 402 and/or California Health & Safety Code § 41700 in the last 12 months are not eligible for a deadline extension. Source tests required pursuant to Rule 1402 are also not eligible for an extension.

A facility may apply using the above process to seek a 60-day extension of deadlines for Relative Accuracy Test Audits (RATA), Relative Accuracy Audits (RAA), Cylinder Gas Analysis (CGA),

Linearity Tests, Boiler Portable Analyzer Testing and Tune-Ups, and any similar test required to verify emissions or to ensure the accuracy and precision of measurements (i.e., calibration). This extension is not available for the operation, maintenance, or automatic daily calibration of Continuous Emissions Monitoring Systems (CEMS), in order to ensure the absence of excess emissions.

C. Training and Certification Requirements

South Coast AQMD's headquarters in Diamond Bar is now closed to the public, and all training classes offered to the public have been temporarily canceled. This includes classes for the following subjects: Controlling Fugitive Dust (Rules 403 & 403.1); Gasoline Transfer and Dispensing (Rule 461); Certifications for Inspection of Aboveground Storage Tanks (Rules 463 & 1178); Combustion Gas Portable Analyzer Training and Certification (Rules 1146, 1146.1, & 1110.2); Certification to Inspect Sumps and Wastewater Separators (Rule 1176); Asbestos Demolition and Renovation (Rule 1403); Hexavalent Chromium Operations (Rule 1469); and Employee Transportation Coordinator (ETC) Training (Rule 2202).

Staff understands that these cancelations will prevent recertification of individuals to conduct inspections, submit notifications, and conduct other types of activities required under particular rules. Accordingly, all persons whose certifications are scheduled to lapse during the Effective Period will be automatically granted a 60-day extension. For initial certifications under those rules, such as for Rule 461 self-inspections or Rule 1469 recordkeeping, staff is in the process of creating online content to provide the requisite training and provisional certifications, where appropriate. Updates will be placed on the South Coast AQMD Compliance Training webpage, which may be found [here](#).

D. Portable Engines and Equipment

While the requirements of the Portable Equipment Registration Program (PERP) continue to be in effect, the use of unpermitted or unregistered portable engine or equipment units is allowed in situations that will assist in responding to the ongoing COVID-19 crisis. Owners or operators may receive authorization to use those unpermitted/unregistered units upon submitting a [Form 40 – Notification of Operation in an Emergency Event](#) to CARB at portable@arb.ca.gov. If approved, the Form 40 is also forwarded to South Coast AQMD, so no additional submission to South Coast AQMD is required.

Staff understands that the current situation has led to delays in the issuance and/or installation of placards and stickers on currently-registered equipment. During the Effective Period, owners or operators will be allowed to use PERP equipment, under normal, non-emergency circumstances, in the absence of placards or stickers. PERP registrations will be verified at the time of inspection, and no specific request need be submitted to obtain this relief.

E. Routine Reports and Plan Submittals

South Coast AQMD will attempt to work with regulated entities to temporarily reduce the burden of routine reporting and plan submission requirements. The aforementioned 60-day extension may apply to all deadlines that occur during the Effective Period for the following routine reports:

- Quarterly Emissions Reports under Rule 1118;
- Annual Quantity and Emissions Reports under Rule 1143;
- Annual and Quarterly Reports for Landfills under Rule 1150.1;
- Annual and Quarterly Reports under Rules 1173 and 1176; and
- Quarterly and monthly electronic emissions reporting, and Quarterly Certification of Emissions Reports (QCERs), for the RECLAIM program.

If a facility has reporting deadlines that the owner or operator believes should be on this list, please contact EmergencyRelief@aqmd.gov.

The extension does not apply to breakdown/deviation reports (500-N), specific cause analyses, or any other submissions required after equipment breakdowns, process upsets, unplanned flaring, or other discrete events. This policy also does not apply to Annual Emission Reports (AERs), submittals associated with the Toxic Hot Spots program under AB 2588 and Rule 1402, or reports or submissions required under Rule 314 and Rule 2202. The deadline for Annual Emission Reporting has been extended to April 17, 2020, and both AERs and associated fees will be due on that date. Deadlines for submitting materials required by Rule 1402 remain in effect. Requests to extend deadlines associated with submittal of Air Toxics Inventory Reports, required source tests, Health Risk Assessments, Risk Reduction Plans, Voluntary Risk Reduction Plans, and associated supporting materials and reports will be handled on an individual basis. Deadlines for surveys and plan submittals under Rule 2202 have already been extended for 90 days.

Where hard copies are expressly required to comply with rule provisions, South Coast AQMD will exercise its enforcement discretion to accept digital versions of reports and other submissions, as well as accept authorized individuals' execution of documents electronically in lieu of "wet" signatures.

III. Case-by-Case Consideration

Requirements for South Coast AQMD to be notified regarding breakdowns and other process upsets, flaring events, Title V or RECLAIM deviations, and asbestos renovations and demolitions shall remain in effect because of their correlation to actual emissions and corresponding, potentially serious health impacts. Similarly, notifications that include work plans – such as for oil and gas well activities under Rule 1148.2, excavation to be done under Rule 1166, soil movement under Rule 1466, and Rule 1403 Procedure 5 asbestos cleanup plans – are still required. Recordkeeping requirements, especially for petroleum refineries, sources of toxic air contaminants, and other facilities with hazardous materials, must likewise continue in order to protect the public.

If a regulated entity believes that full or timely compliance with a non-emissions-related requirement (other than the requirements listed above in Part II) is inconsistent with public health directives or guidance related to COVID-19, it may make a request for enforcement discretion using a form provided by South Coast AQMD. [This form](#) will require, among other things, the following information:

- a. The specific provision(s) of a rule, permit, or other requirement that cannot be fully or timely met;

- b. The expected duration of need for enforcement discretion, including specific impacts of COVID-19 on operations and on the ability to comply;
- c. A succinct but complete explanation of why full or timely compliance is inconsistent with applicable public health directives or guidance, including efforts made to comply; and
- d. Any action that the regulated entity will take in lieu of full and timely compliance to fulfill its rule or permit obligations as nearly as possible.

Instead of simply identifying obligations for which compliance may not be possible, entities seeking relief should propose concrete, verifiable steps to be taken to achieve the goals of the rule provision or requirement at issue. A facility should identify any information that it believes to be business confidential in its submission. Deference will be afforded to entities seeking to participate in pandemic relief efforts. Staff will also attempt to make special accommodations for businesses that are completely shutting down during the Effective Period. It is the responsibility of the regulated entity to provide adequate factual support for any such request and to use best efforts to return to compliance. This request should be submitted via e-mail to EmergencyRelief@aqmd.gov.

No enforcement discretion will be granted for public nuisance violations under Rule 402 and/or California Health & Safety Code § 41700.

IV. Conclusion

These temporary measures are designed to assist regulated entities to address the consequences of social distancing and travel restrictions issued by governmental entities, as well as workforce reductions and/or the unavailability of key employees, contractors, vendors, or other necessary persons, while at the same time protecting the health and safety of local communities throughout the South Coast Air Basin. Staff is committed to working with all stakeholders during the ongoing COVID-19 crisis. Further extensions of administrative deadlines will be considered, as necessary, prior to the expiration of the Effective Period. Also, the variance process pursuant to California Health & Safety Code § 42350, et seq. remains available for regulated entities that are still unable to comply due to conditions beyond their reasonable control even after consideration of the above.

If you have any questions, please feel free to contact Marian Coleman, Deputy Executive Officer for Compliance & Enforcement, at mcoleman1@aqmd.gov or (909) 396-2415, or Terrence Mann, Assistant Deputy Executive Officer for Compliance & Enforcement, at tmann@aqmd.gov or (909) 396-3023.