



To: Facilities Subject to Regulation by County of Alameda, Department of Environmental Health, Hazardous Materials Division

From: Ronald Browder, Director of Environmental Health **RB**

Date: April 20, 2020

Re: Regulatory Compliance During COVID-19 Shelter in Place Orders

PURPOSE

The purpose of this notice is to respond to inquiries that have been made to the Alameda County Department of Environmental Health (ACDEH), Hazardous Materials Division (HMD) from facilities about compliance with regulatory requirements during the Coronavirus disease 2019 (COVID-19) shelter in place orders. ACDEH HMD, as the Certified Unified Program Agency (CUPA), oversees five programs: (1) the Hazardous Materials Release Response Plans and Inventories also called the Hazardous Materials Business Plan (HMBP) program, (2) the Underground Storage Tank (UST) program, (3) the Hazardous Waste Generator and Onsite Hazardous Waste Treatment (Tiered Permitting) program, (4) the Aboveground Petroleum Storage Act (APSA) program, and (6) the California Accidental Release Prevention (CalARP) program.

BACKGROUND – COVID-19 PANDEMIC

In December 2019, an outbreak of a highly contagious and potentially fatal respiratory illness was identified from a novel coronavirus also referred to as COVID-19. The Governor of the State of California issued a Proclamation of a State of Emergency on March 4, 2020 followed by Executive Orders to assist in preventing and mitigating the effects of the COVID-19 pandemic. The Health Officer of the County of Alameda issued an order to shelter in place on March 16, 2020, effective on March 17, 2020, which was extended on March 31, 2020, and currently is in effect until May 3, 2020 (collectively, together with any extensions, the Shelter in Place Order).

The Shelter in Place Order directs all individuals living in Alameda County to shelter at their place of residence, except for essential services. The Order imposes limitations on what business may be conducted, specifies the types of travel that may be done, and provides instruction on how businesses that are deemed essential are to conduct operations, including effective social (physical) distancing.

REGULATORY REQUIREMENTS

ACDEH HMD, as well as other regulatory agencies such as the United States Environmental Protection Agency, State agencies and other CUPAs, 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. ACDEH HMD is aware that the COVID-19 pandemic may have an impact on how businesses are able to promptly comply with all regulatory requirements, as well as its own ability to promptly conduct all inspections and enforcement actions. However, neither the Governor, nor any legislative or regulatory agency with authority, has waived or limited any requirements or compliance with regulatory obligations during the Shelter in Place Order. Therefore, regulated facilities remain fully responsible for compliance and are subject to enforcement actions for being out of compliance, including but not limited to the identification of violations during inspections/reviews of facility documentation and the issuance of Notices of Violations and Administrative Orders including assessments of fines and penalties. Timely compliance by the regulated community with all orders and other requirements (including regulations, permits, and conditions) is generally considered to be an essential function during the COVID-19 pandemic.

DOCUMENTATION OF EFFORTS TO COMPLY

Facilities remain responsible for compliance with all regulatory and statutory requirements. ACDEH HMD is aware that the Shelter In Place Order (starting on March 17, 2020) may present challenges to regulated facilities with compliance due to various factors such as worker shortages, travel and social (physical) distancing restrictions, and laboratory and vendor business closures and slowdowns. If during the period of the Shelter in Place Order compliance with a facility's obligations is not reasonably practicable, then regulated parties should:

- a. Act reasonably under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19.
- b. Return to full compliance as soon as possible.
- c. Document efforts to comply including:
 - a. Identify the regulation, order, permit or any other requirement that cannot be timely met.
 - b. Identify the specific nature and dates of noncompliance.
 - c. Explain the cause of the noncompliance and the decisions and actions taken, including your best efforts to comply and steps taken to come into compliance at the earliest opportunity.

PAYMENTS FOR PERMITS, FEES, AND LATE PENALTIES

Even if facilities are not conducting business as usual as a result of the Shelter in Place Order, facilities are still fully responsible for timely payment for all permits, fees, and late penalties. Neither the Governor, nor any legislative or regulatory agency with authority has provided for waiver or deferral of such payments during the Shelter in Place Orders, and facilities must comply with these obligations.

REPORTING AND INSPECTIONS

As most reporting and California Environmental Reporting System (CERS) submissions can be done remotely, regulated facilities must be current in complying with these requirements. While there may be some delay, ACDEH HMD will continue to review and notify facilities if there is missing information or other issues in their reporting and submissions. Failure to be current with reporting and permitting requirements, even during the Shelter in Place Order, may lead to enforcement actions.

To the extent possible, ACDEH HMD will continue to conduct inspections. We are exploring conducting inspections remotely. To assist our inspectors, COVID-19 Inspection Protocols have been created for how ACDEH HMD inspections can be conducted at facilities, including establishing appropriate social (physical) distancing. If staff at a facility are not acting in accordance with the COVID-19 Inspection Protocols, then the inspector may stop the inspection and the report will note that the inspection was incomplete. Please be aware, during this time of rapidly changing orders and best practices advice, the COVID-19 Inspection Protocols may evolve and change. Please note that the COVID-19 Inspection Protocols are to assist ACDEH HMD in conducting inspections while following social (physical) distancing recommendations, and are not directives, policies or recommendations on how your facility should conduct its business during this time.