



April 3, 2020

VIA FOIAONLINE.REGULATIONS.GOV

U.S. Environmental Protection Agency

Re: Freedom of Information Act Request: Enforcement Discretion Policy for COVID-19 Pandemic – Internal Records

Dear FOIA Officer:

This is a request under the Freedom of Information Act, 5 U.S.C. § 552, *as amended* (“FOIA”), from the Center for Biological Diversity (“Center”), a non-profit organization that works to secure a future for all species hovering on the brink of extinction through science, law, and creative media, and to fulfill the continuing educational goals of its membership and the general public in the process.

REQUESTED RECORDS

As background, on March 23, 2020, the American Petroleum Institute sent a letter to Administrator Wheeler, requesting “temporary relief through non-essential compliance discretion” in light of the COVID-19 coronavirus pandemic (“the API Letter”). Attachment A (API Letter). On March 26, 2020, the Environmental Protection Agency (“EPA”) released what it has referred to as its Enforcement Discretion Policy for the COVID-19 Pandemic,¹ in the form of a memorandum with the subject COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Policy (“Enforcement Discretion Policy”).²

The Center requests from EPA from March 1, 2020 to the date EPA conducts this search:

1. The records mentioning or generated in response to the API Letter; and
2. The records generated in association with or referring to EPA’s Enforcement Discretion Policy.

¹ Environmental Protection Agency, EPA Announced Enforcement Discretion Policy for COVID-19 Pandemic, <https://www.epa.gov/newsreleases/epa-announces-enforcement-discretion-policy-covid-19-pandemic> (last visited April 2, 2020).

² Environmental Protection Agency, COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Policy (Mar. 26, 2020), *available at* <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf> (last visited April 2, 2020).

For this request, the term “records” refers to, but is not limited to, any and all documents, correspondence (including, but not limited to, inter and/or intra-agency correspondence as well as correspondence with entities or individuals outside the federal government), emails, letters, notes, recordings, telephone records, voicemails, telephone notes, telephone logs, text messages, chat messages, minutes, memoranda, comments, files, presentations, consultations, biological opinions, assessments, evaluations, schedules, papers published and/or unpublished, reports, studies, photographs and other images, data (including raw data, GPS or GIS data, UTM, LiDAR, etc.), maps, and/or all other responsive records, in draft or final form.

This request is not meant to exclude any other records that, although not specially requested, are reasonably related to the subject matter of this request. If you or your office have destroyed or determine to withhold any records that could be reasonably construed to be responsive to this request, I ask that you indicate this fact and the reasons therefore in your response.

Under the FOIA Improvement Act of 2016, agencies are prohibited from denying requests for information under FOIA unless the agency reasonably believes release of the information will harm an interest that is protected by the exemption. FOIA Improvement Act of 2016 (Public Law No. 114-185), codified at 5 U.S.C. § 552(a)(8)(A).

Should you decide to invoke a FOIA exemption, please include sufficient information for us to assess the basis for the exemption, including any interest(s) that would be harmed by release. Please include a detailed ledger which includes:

1. Basic factual material about each withheld record, including the originator, date, length, general subject matter, and location of each item; and
2. Complete explanations and justifications for the withholding, including the specific exemption(s) under which the record (or portion thereof) was withheld and a full explanation of how each exemption applies to the withheld material. Such statements will be helpful in deciding whether to appeal an adverse determination. Your written justification may help to avoid litigation.

If you determine that portions of the records requested are exempt from disclosure, we request that you segregate the exempt portions and mail the non-exempt portions of such records to my attention at the address below within the statutory time limit. 5 U.S.C. § 552(b).

The Center is willing to receive records on a rolling basis.

Finally, FOIA’s “frequently requested record” provision was enacted as part of the 1996 Electronic Freedom of Information Act Amendments, and requires all federal agencies to give “reading room” treatment to any FOIA-processed records that, “because of the nature of their subject matter, the agency determines have become the subject of subsequent requests for substantially the same records.” *See* 5 U.S.C. § 552(a)(2)(D)(ii)(I). Also, enacted as part of the 2016 FOIA Improvement Act, FOIA’s Rule of 3 requires all federal agencies to proactively “make available for public inspection in an electronic format” “copies of records, regardless of form or format ... that have been released to any person ... and ... that have been requested 3 or more times.” 5 U.S.C. § 552(a)(2)(D)(ii)(II). Therefore, we respectfully request that you make

available online any records that the agency determines will become the subject of subsequent requests for substantially the same records, and records that have been requested three or more times.

FORMAT OF REQUESTED RECORDS

Under FOIA, you are obligated to provide records in a readily accessible electronic format and in the format requested. *See, e.g.*, 5 U.S.C. § 552(a)(3)(B) (“In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.”).

“Readily accessible” means text-searchable and OCR-formatted. *See* 5 U.S.C. § 552(a)(3)(B). Pursuant to this requirement, we hereby request that you produce all records in an electronic format and in their native file formats. Additionally, please provide the records in a load-ready format with a CSV file index or Excel spreadsheet. If you produce files in .PDF format, then please omit any “portfolios” or “embedded files.” Portfolios and embedded files within files are not readily accessible. Please do not provide the records in a single, or “batched,” .PDF file. We appreciate the inclusion of an index.

If you should seek to withhold or redact any responsive records, we request that you: (1) identify each such record with specificity (including date, author, recipient, and parties copied); (2) explain in full the basis for withholding responsive material; and (3) provide all segregable portions of the records for which you claim a specific exemption. 5 U.S.C. § 552(b). Please correlate any redactions with specific exemptions under FOIA.

RECORD DELIVERY

We appreciate your help in expeditiously obtaining a determination on the requested records. As mandated in FOIA, we anticipate a reply within 20 working days. 5 U.S.C. § 552(a)(6)(A)(i); 5 C.F.R. § 1303.10(c). Failure to comply within the statutory timeframe may result in the Center taking additional steps to ensure timely receipt of the requested materials. Please provide a complete reply as expeditiously as possible. You may email or mail copies of the requested records to:

Ann K. Brown
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211
foia@biologicaldiversity.org

If you find that this request is unclear, or if the responsive records are voluminous, please email me to discuss the scope of this request.

REQUEST FOR FEE WAIVER

FOIA was designed to provide citizens a broad right to access government records. FOIA’s basic purpose is to “open agency action to the light of public scrutiny,” with a focus on the

public's "right to be informed about what their government is up to." *NARA v. Favish*, 541 U.S. 157, 171 (2004) quoting *U.S. Dep't of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 773-74 (1989) (internal quotation and citations omitted). In order to provide public access to this information, FOIA's fee waiver provision requires that "[d]ocuments shall be furnished without any charge or at a [reduced] charge," if the request satisfies the standard. 5 U.S.C. § 552(a)(4)(A)(iii). FOIA's fee waiver requirement is "liberally construed." *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1310 (D.C. Cir. 2003); *Forest Guardians v. U.S. Dept. of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005).

The 1986 fee waiver amendments were designed specifically to provide non-profit organizations such as the Center access to government records without the payment of fees. Indeed, FOIA's fee waiver provision was intended "to prevent government agencies from using high fees to discourage certain types of requesters and requests," which are "consistently associated with requests from journalists, scholars, and *non-profit public interest groups*." *Ettlinger v. FBI*, 596 F.Supp. 867, 872 (D. Mass. 1984) (emphasis added). As one Senator stated, "[a]gencies should not be allowed to use fees as an offensive weapon against requesters seeking access to Government information" 132 Cong. Rec. S. 14298 (statement of Senator Leahy).

I. The Center Qualifies for a Fee Waiver.

Under FOIA, a party is entitled to a fee waiver when "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the [Federal] government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). EPA's regulations at 40 C.F.R. § 2.107(l)(1)-(3) establish the same standard.

Thus, EPA must consider four factors to determine whether a request is in the public interest: (1) whether the subject of the requested records concerns "the operations or activities of the Federal government," (2) whether the disclosure is "likely to contribute" to an understanding of government operations or activities, (3) whether the disclosure "will contribute to public understanding" of a reasonably broad audience of persons interested in the subject, and (4) whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. 32 C.F.R. § 286.28(d)(3)(i). As shown below, the Center meets each of these factors.

A. The Subject of This Request Concerns "The Operations and Activities of the Government."

The subject matter of this request concerns the operations and activities of EPA. This request asks for from EPA from March 1, 2020 to the date EPA conducts this search: (1) the records mentioning or generated in response to the API Letter; and (2) the records generated in association with or referring to EPA's Enforcement Discretion Policy.

This FOIA will provide the Center and the public with crucial insight into EPA's decision-making process. It is clear that a federal agency's decisions are specific and identifiable activities of the government, and in this case it is the executive branch agency of EPA. *Judicial*

Watch, 326 F.3d at 1313 (“[R]easonable specificity is all that FOIA requires with regard to this factor”) (internal quotations omitted). Thus, the Center meets this factor.

B. Disclosure is “Likely to Contribute” to an Understanding of Government Operations or Activities.

The requested records are meaningfully informative about government operations or activities and will contribute to an increased understanding of those operations and activities by the public. Disclosure of the requested records will allow the Center to convey to the public information about the underlying assumptions and external influence affecting EPA’s decisions, conclusions and policies. Responsive records will also reveal what information the agency has in its possession, including what factual analyses and scientific review EPA undertook or relied upon by agency employees. Once the information is made available, the Center will analyze it and present it to its 1.7 million members and online activists and the general public in a manner that will meaningfully enhance the public’s understanding of this topic.

Thus, the requested records are likely to contribute to an understanding of EPA’s operations and activities.

C. Disclosure of the Requested Records Will Contribute to a Reasonably-Broad Audience of Interested Persons’ Understanding of the Enforcement Discretion Policy and the Factors that Led to its Development.

The requested records will contribute to public understanding of whether EPA’s actions are consistent with its mission and purpose. As explained above, the records will contribute to public understanding of this topic.

Activities of EPA generally, and specifically how it reaches its decisions and conclusions are areas of interest to a reasonably broad segment of the public. The Center will use the information it obtains from the disclosed records to educate the public at large about this subject matter. *See W. Watersheds Proj. v. Brown*, 318 F.Supp.2d 1036, 1040 (D. Idaho 2004) (“... find[ing] that WWP adequately specified the public interest to be served, that is, educating the public about the ecological conditions of the land managed by the BLM and also how ... management strategies employed by the BLM may adversely affect the environment.”).

Through the Center’s synthesis and dissemination (by means discussed in Section II, below), disclosure of information contained in and gleaned from the requested records will contribute to a broad audience of persons who are interested in the subject matter. *Ettlinger v. FBI*, 596 F.Supp. at 876 (benefit to a population group of some size distinct from the requester alone is sufficient); *Carney v. Dep’t of Justice*, 19 F.3d 807, 815 (2d Cir. 1994), *cert. denied*, 513 U.S. 823 (1994) (applying “public” to require a sufficient “breadth of benefit” beyond the requester’s own interests); *Cnty. Legal Servs. v. Dep’t of Hous. & Urban Dev.*, 405 F.Supp.2d 553, 557 (E.D. Pa. 2005) (in granting fee waiver to community legal group, court noted that while the requester’s “work by its nature is unlikely to reach a very general audience,” “there is a segment of the public that is interested in its work”).

Indeed, the public does not currently have an ability to easily evaluate the requested records, which are not currently in the public domain. *See Cmty. Legal Servs. v. HUD*, 405 F.Supp.2d 553, 560 (D. Pa. 2005) (because requested documents “clarify important facts” about agency policy, “the CLS request would likely shed light on information that is new to the interested public.”). As the Ninth Circuit observed in *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1286 (9th Cir. 1987), “[FOIA] legislative history suggests that information [has more potential to contribute to public understanding] to the degree that the information is new and supports public oversight of agency operations... .”³

Disclosure of these records is not only “likely to contribute,” but is certain to contribute, to public understanding of the factual analyses and scientific review relied upon by EPA during its decision-making process. The public is always well served when it knows how the government conducts its activities, particularly matters touching on legal questions and public health and safety. Hence, there can be no dispute that disclosure of the requested records to the public will educate the public about this topic.

D. Disclosure is Likely to Contribute Significantly to Public Understanding of Government Operations or Activities.

The Center is not requesting these records merely for their intrinsic informational value. Disclosure of the requested records will significantly enhance the public’s understanding of the underlying assumptions and possible external influence affecting EPA’s decision-making process, as compared to the level of public understanding that exists prior to the disclosure. Indeed, public understanding will be *significantly* increased as a result of disclosure because the requested records will help reveal more about how the EPA arrived at its decision not to enforce a broad swathe of regulatory obligations.

The records are also certain to shed light on EPA’s compliance with its mission and purpose. Such public oversight of agency action is vital to our democratic system and clearly envisioned by the drafters of the FOIA. Thus, the Center meets this factor as well.

II. The Center has a Demonstrated Ability to Disseminate the Requested Information Broadly.

The Center is a non-profit organization that informs, educates, and counsels the public regarding environmental issues, policies, and laws relating to environmental issues. The Center has been substantially involved in the activities of numerous government agencies for over 30 years, and has consistently displayed its ability to disseminate information granted to it through FOIA. In consistently granting the Center’s fee waivers, agencies have recognized: (1) that the information requested by the Center contributes significantly to the public’s understanding of the government’s operations or activities; (2) that the information enhances the public’s

³ In this connection, it is immaterial whether any portion of the Center’s request may currently be in the public domain because the Center requests considerably more than any piece of information that may currently be available to other individuals. *See Judicial Watch*, 326 F.3d at 1315.

understanding to a greater degree than currently exists; (3) that the Center possesses the expertise to explain the requested information to the public; (4) that the Center possesses the ability to disseminate the requested information to the general public; (5) and that the news media recognizes the Center as an established expert in the field of imperiled species, biodiversity, and impacts on protected species. The Center's track record of active participation in oversight of governmental activities and decision making, and its consistent contribution to the public's understanding of those activities as compared to the level of public understanding prior to disclosure are well established.

The Center intends to use the records requested here similarly. The Center's work appears in more than 2,500 news stories online and in print, radio and TV per month, including regular reporting in such important outlets as *The New York Times*, *Washington Post*, *The Guardian*, and *Los Angeles Times*. In 2019, more than 2.9 million people visited the Center's extensive website, and viewed pages a total of 5.3 million times. The Center sends out more than 297 email newsletters and action alerts per year to more than over 1.7 million members and supporters. Three times a year, the Center sends printed newsletters to more than 74,500 members. More than 561,000 people follow the Center on Facebook, and there are regular postings regarding environmental protection. The Center also regularly tweets to more than 85,000 followers on Twitter. The Center intends to use any or all of these far-reaching media outlets to share with the public information obtained as a result of this request.

Public oversight and enhanced understanding of EPA's duties, and its decision not to perform those duties, is absolutely necessary. In determining whether disclosure of requested information will contribute significantly to public understanding, a guiding test is whether the requester will disseminate the information to a reasonably-broad audience of persons interested in the subject. *Carney v U.S. Dept. of Justice*, 19 F.3d 807 (2nd Cir. 1994). The Center need not show how it intends to distribute the information, because "[n]othing in FOIA, the [agency] regulation, or our case law require[s] such pointless specificity." *Judicial Watch*, 326 F.3d at 1314. It is sufficient for the Center to show how it distributes information to the public generally. *Id.*

III. Obtaining the Requested Records is of No Commercial Interest to the Center.

Access to government records, disclosure forms, and similar materials through FOIA requests is essential to the Center's role of educating the general public. Founded in 1994, the Center is a 501(c)(3) nonprofit conservation organization (EIN: 27-3943866) with more than 1.7 million members and online activists dedicated to the protection of endangered and threatened species and wild places. The Center has no commercial interest and will realize no commercial benefit from the release of the requested records.

IV. Conclusion

For all of the foregoing reasons, the Center qualifies for a full fee waiver. We hope that EPA will immediately grant this fee waiver request and begin to search and disclose the requested records without any unnecessary delays.

If you have any questions, please contact me at foia@biologicaldiversity.org. All records and any related correspondence should be sent to my attention at the address below.

Sincerely,

A handwritten signature in black ink, appearing to read "Ann K. Brown". The signature is fluid and cursive, with a long horizontal stroke at the end.

Ann K. Brown
Open Government Coordinator
CENTER FOR BIOLOGICAL DIVERSITY
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Attachment

Attachment A (API Letter)

Attachment A



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March 23, 2020

The Honorable Andrew Wheeler, Administrator
US Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Wheeler:

On behalf of the members of the American Petroleum Institute,¹ I would like to thank you for your efforts at the Environmental Protection Agency to assist in our nation's response to the global crisis arising from the COVID-19 pandemic. The oil and natural gas industry, like other critical infrastructure sectors, is working tirelessly to help ensure there is no interruption in our supply chains as a result of these unprecedented circumstances. We play a critical role in providing affordable and reliable energy, which is essential to maintaining our national security and will help drive our economic recovery. As indicated in a letter dated March 20th from API President and CEO Michael J. Sommers to President Donald J. Trump (attached), there are two potential overarching issues that may affect our industry: critical infrastructure designations and temporary relief through non-essential compliance discretion. The purpose of this letter is to specifically address the issues within your agency's purview associated with non-essential compliance discretion.

Non-essential Compliance Discretion

The oil and natural gas industry remains committed to prioritizing safe and reliable operations, but is taking into consideration that there may be limited personnel capacity

¹ API represents all segments of America's oil and natural gas industry. Its more than 600 members produce, process, and distribute most of the nation's energy. The industry supports 10.9 million U.S. jobs and is backed by a growing grassroots movement of millions of Americans. API was formed in 1919 as a standards-setting organization. In its first 100 years, API has developed more than 700 standards to enhance operational and environmental safety, efficiency and sustainability.



to manage the full scope of the current regulatory requirements. As such, we are requesting assistance from your agency in temporarily waiving non-essential compliance obligations, and we request coordination with your state agency counterparts as necessary. As indicated in the letter to President Trump, these issues may include recordkeeping, training or other non-safety critical requirements.

Industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic. Specifically, industry is asking Federal and State agencies to publicly provide guidance related to performance delays tied to challenges with the pandemic associated with:

- Quarantine/treatment due to employee exposure to COVID-19;
- Measures taken by the industry to avoid COVID-19 transmission and spread;
- Good faith attempts by the industry to comply with national, state or local edicts related to controlling the virus;
- Addressing the risks of continuing to conduct routine agency inspections; and
- Contractor availability and supply chain disruptions related to all of the above.

Individual company requests for relief would be burdensome to file and track and a more holistic approach may be necessary in an unprecedented situation such as the one we are facing. Nonetheless, industry will make efforts to comply with requirements, but obviously the situation may limit some activities.

Additionally, many of the nation's petroleum refineries are parties to one or more state or federal judicial or administrative consent agreements or decrees with the U.S. EPA and/or its state counterparts. These agreements generally include force majeure clauses which require the settling party to notify the government of known or anticipated compliance delays within tight timeframes. Failure to meet the prescribed notification timeframe often voids any enforcement protection the settling party might otherwise have under the agreement. These hurdles become particularly problematic in the current climate of the COVID-19 disease, where delays in meeting settlement



requirements might occur due to workforce impacts or reductions or other disruptions that are difficult to predict and continue to evolve. They may also be complicated by the daily pronouncement of protection measures suggested or required by national, state and local governments. There may be a need for federal and state officials to work with individual companies as part of their settlement agreements.

Given the considerations associated with the importance of following CDC guidance for public health, the attached list provides detailed examples of issues for which industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic.

In closing, the COVID-19 pandemic represents a significant and historic threat to our nation. We thank the Administration for its continued efforts in combating this threat and we thank your agency for its efforts key to this undertaking. We look forward to partnering with you to help ensure that critical fuels are available, so that we as a nation can continue to respond to this crisis. Thank you for consideration of the requests outlined in this letter, and please do not hesitate to contact API as we stand ready to assist in any way possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Frank J. Macchiarola".

Frank J. Macchiarola

Attachment: API Member Company Priority Issues for COVID-19 Response

Industry is seeking temporary relief through enforcement discretion, waivers or revised compliance timeframes in response to the COVID-19 pandemic. Specifically, industry is asking EPA to publicly provide guidance related to performance delays tied to challenges with the pandemic associated with the identified constraints. Given the uncertainty of the severity and duration of this pandemic, the following categories of constraints have been identified:

- Category 1: Administrative constraints while working remotely
- Category 2: Physical constraints with on-site testing/monitoring requirements
- Category 3: Operability of assets

For certain constraints, we have also identified some specific potential solutions in sub-bullets.

Category 1: Administrative challenges while working remotely

EPA and State Agency examples include but are not limited to:

- Wet signatures requirements on permit applications and reports, such as Title V permit applications. Responsible officials may not have ready access to printers or a DocuSign option. Clarity needed on alternatives.
- Temporary relief for notary witnessing of signatures on permits, etc.
- Potential delay to project permits due to closed state agency offices/canceled meetings that may reset the public comment period.
- Deferred permit renewal applications for expiring permits to address revised work schedules/arrangements.
- Potential to miss certifying laboratory equipment unless NIST certified instruments can be purchased and delivered in time.
- Periodic certification and reporting:
 - Deferred filing of periodic reports

- Examples include emissions inventory, emissions banking and trading, TRI reports and rule- or permit-required periodic reports.
- Filing of reports without the normal signatures (where plant manager or formal designee is unavailable).

Category 2: Physical challenges with on-site testing/monitoring/reporting requirements

EPA and State Agency examples include but are not limited to:

- Waivers of seasonal fuels requirements
- Fuels reporting and compliance
 - Request waivers or enforcement discretion for late reports due to access and resource limitations for the following types of reports:
 - Annual gasoline and Renewable Fuel Standard (RFS) reports
 - EMTS Fuels ABT Credit generation and retirement for compliance with gasoline programs
 - EMTS RIN retirements for annual compliance with RFS standards
- Annual gasoline and RFS program attest engagements
- Fugitive Leak Detection and Repair (LDAR)
 - Deferred LDAR monitoring
 - Late repair times
 - Late recheck of LDAR component after monitoring
 - Delayed reporting
 - Inability to address delay of repair during unit shutdowns due to personnel, supply or external resource shortages or disruptions
- Delayed GHG reporting
- Benzene Waste Operations (BWON)
 - Deferred monitoring
 - Late repair times
 - Delayed reporting

- Potential for delayed or missed sampling required for reporting or to demonstrate exemption from control
- NSPS & MACT
 - Regulatory noncompliance due to limited onsite personnel or external resource shortages or disruptions
 - Late reports due to limited onsite personnel or external resource shortages or disruptions
 - Subpart XX tank trucks vapor tightness tests may not be available
 - Lower shipping levels could prevent enough product available to float an internal floating roof tank when refilling, resulting in a compliance issue under GD GACT or NSPS Subpart Kb
- CEMS and stack tests
 - Delayed stack and RATA testing
 - Missed or late CEMS evaluation
 - Unable to repair CEMS due to specialized knowledge vested in personnel
 - Unable to repair CEMS due to parts unavailability
 - Delayed reports from contractors whose employees are quarantined or in remote work arrangements
 - Waive or delay 6-month smoke school recertification due to cancellation of training/testing sessions to avoid unavailability of emissions observers.
- Cooling tower sampling
 - Delayed sampling and analysis
 - Delayed reports from contractors whose employees are quarantined or in remote work arrangements
 - Lack of lab availability
- Fence line monitoring
 - Unable to change sample tubes in a timely manner
 - Disruptions in lab shipments
 - Lab analytical delays

- Delayed reports from contractors whose employees are quarantined or in remote work arrangements
- Different verifiers for Title V obligations may be unavailable to certify compliance with the requirements
- Extend recurring/refresh deadline for Method 9 (visible emissions) certification.
- Extend deadlines for required visible emission monitoring of permitted facilities.

- Drinking Water Permit testing and reporting requirements
 - Provide flexibility on routine monitoring/sampling/analysis required drinking water permits.
 - Expected delays in laboratory analysis and short hold time for coliform
- Effluent inspections, sampling and reporting (NPDES and SWPPP)
 - Deferred inspections (monthly, quarterly, etc.).
 - Deferred sampling and WET testing.
 - Deferred filing of periodic reports.
 - Late lab turn-around time on sample results.
 - Missed hold-time on samples.
 - Delayed reporting.
 - Delayed annual training.
 - Contractor who typically performs grab samples is temporarily unable to access site pending medical screening.
 - Improper storage temperature.
 - Inability to collect discharge samples within specified time period due to unavailability of personnel.
 - Storm water monitoring and compliance samples within required timeframe (for rain events) may be problematic.
 - Hydrotesting – providing for pre-approval of low-risk discharges and/or a streamlined approval process. This would help prevent holding up construction and field work to get these permits as the current approval processes are likely to slow down with agencies working remotely.

- Lack of lab availability.
- NPDES/Discharge Permits (EPA/State)
 - Effluent inspections, sampling and reporting.
 - Deferred inspections (monthly, quarterly, etc.).
 - Deferred sampling and WET testing.
 - Deferred filing of periodic reports.
 - Late lab turn-around time on sample results.
 - Missed hold-time on samples.
 - Delayed reporting.
 - Contractor who typically performs daily grab samples is temporarily unable to access site pending medical screening.
 - Improper storage temperature.
- Storm Water Permit Compliance (SWPPP/SWP/Discharge Plans) (EPA/State)
 - Possible disruption of required inspections.
 - Challenges with post storm event inspections due to contractor availability.
 - Sample collection and delayed laboratory analyses.
 - Possible delay of BMP inspections and non-compliance repairs to BMPs due to limited contractor availability.
 - Delayed monitoring/annual reporting requirements
- Soil and/or groundwater remediation
 - Delayed sampling and reporting requirements.
 - Delayed project implementation.
 - Lack of lab availability.
- Tanks
 - Potential for late repairs on failed tank inspections
 - Tank inspections (deadlines and logistical issues)
 - Delayed above or underground tank inspections
- Hazardous waste management
 - Ensure that waste and hazardous waste fall under the definition of essential travel/trade.

- Deferral of movements past time limits, including 3-day satellite accumulation time limit and 90-day accumulation time limit.
- Impacts on speculative accumulation requirements.
- Delayed analytics and delayed waste characterization.
- Delayed reporting of specific RCRA permit or remediation program.
- Manifest management disruptions.
- TSD permit noncompliance due to personnel, supply or external resource shortages or disruptions.
- Deferral of weekly inspections.
- Delay of annual training.
- Potential for missed weekly RCRA inspections due to personnel shortage.
- Temporary EPA ID number request processing.
- Renewal of Hazardous Material Transporter ID numbers (annual; via DOT).
- Delayed/limited analytical laboratory support for profiling.
- SPCC
 - SPCC applicability determinations.
 - Generation of site security diagrams.
 - Secondary containment repairs.
 - Deferral of daily and monthly inspections.
 - Deferral of annual training and drills.
 - API Standard 653 integrity inspections.
- Underground Injection Control (UIC)
 - Overall UIC compliance obligations.
 - Deferred Mechanical Integrity Testing (MITs).
 - Deferred monthly/annual monitoring requirements.
 - Surface Injection Pressure monitoring.
 - Injection fluid sampling & laboratory analyses.
 - Monthly disposal volume reporting.
- Self-audits/disclosures (where applicable)
 - Late notices.
 - Late Disclosures of Violation and other submittals on pending audits.

- Late implementation of corrective actions.
- Emergency response drills and mandatory equipment deployment to demonstrate emergency readiness.
- Past-due regulatory training that can only be done in a face-to-face environment, e.g. Method 9 opacity certification.
- Fees for TSCA risk evaluation
 - Manufacturers of 20 high priority chemicals required to conduct risk evaluation by May 27, 2020. Delays needed to gather information from many sources in short timeframe.
- Chemical testing requirements
 - Laboratory capacity may be affected – could impact TSCA testing requests/requirements.
- Chemical Data Reporting (CDR)
 - EPA extending CDR reporting 2 months; EPA should consider additional extensions from potential delays due to needed EPA training, electronic reporting system functioning, etc.

Category 3: Operability of Assets

The industry is already prioritizing their resources for the continued maintenance of its facilities, which is a business-critical activity. This is necessary to not only provide for the safety of its constrained employee and contractor workforce, but also to continue to produce the fuels that the nation depends upon daily. Operators are continuing to obtain permits for activities that are deemed essential to the safe operation of their facilities.

Temporary relief from the agency requirements outlined in Categories 1 and 2 are not expected to result in a significant impact to human health or the environment. By providing temporary relief from those requirements, operators and suppliers will be able to prioritize their resources on those critical activities to enable the continued production of fuels and products.