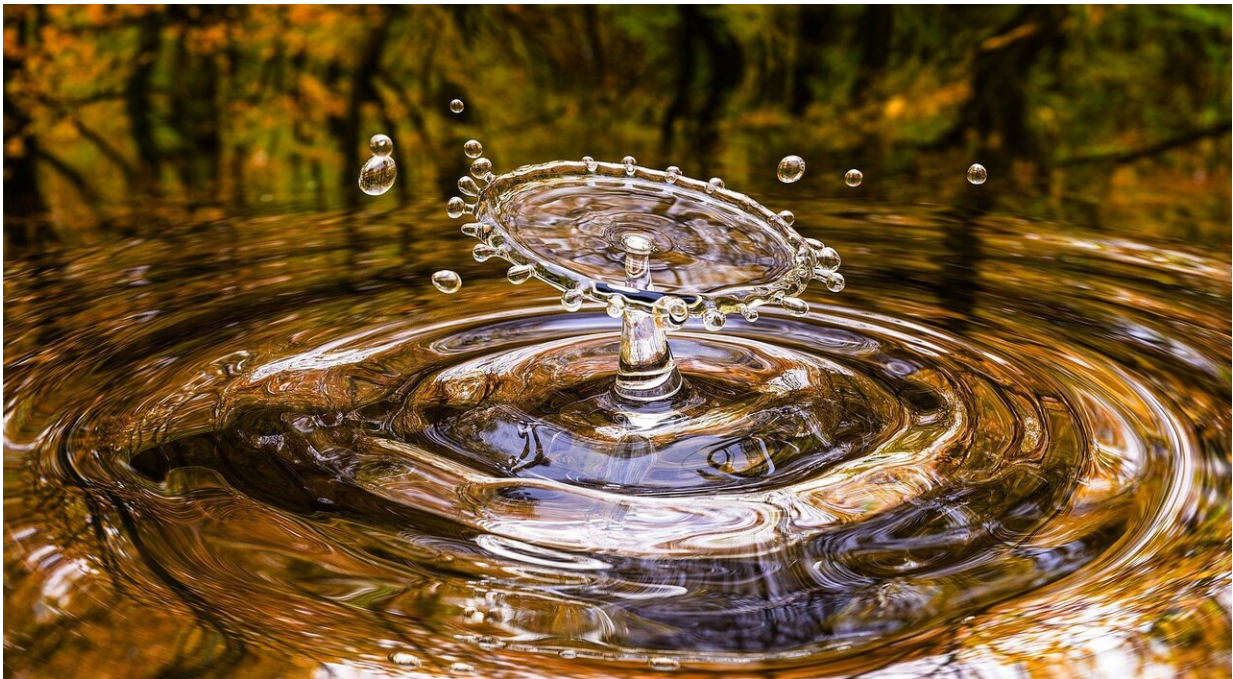


States go their own ways on environmental enforcement during crisis

April 15 2020, by Caroline Tanner



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Some state environmental regulators have decided not to follow the Trump administration's lead in easing enforcement of environmental rules for companies adversely affected by the COVID-19 pandemic.

Like the Environmental Protection Agency, most states appear to be providing some level of enforcement discretion, but the degree of such

forbearance varies.

"Even though industry is pushing to slow down environmental rule-making in California, our governor and state legislative leaders are committed to maintaining and building on our state safety net of public health air and water quality regulations," said Annie Notthoff, Western states advocacy director at Natural Resources Defense Council.

Departures from EPA policy might be expected in states where Democrats control such oversight. But Republican administrations, too, have charted their own course. And some states run by Democrats have also played against type by following the administration's lead.

In Maryland, a traditionally blue state with a Republican governor, Environment Secretary Ben Grumbles is continuing to enforce state [environmental regulations](#).

"We understand we may need to exercise discretion in enforcement of environmental regulations on a limited, case-by-case basis during a disaster, but Maryland is not issuing a broad upfront policy as EPA is doing," Grumbles said. "Maryland remains fully committed to requiring compliance, and we will continue to use enforcement as needed to protect the quality of our air, water and land throughout the state and the Chesapeake Bay region."

In Maryland's case, limited basis means "very restricted in scope and duration and determined after case-by-case considerations rather than a broad, up-front policy of enforcement discretion or leniency," said Jay Apperson, communications director at the Maryland Environment Department. "Inspections are continuing."

Despite Indiana Republican Gov. Eric J. Holcomb authorizing state agencies to "waive, suspend or modify any existing rule of their agency

where the enforcement of which would be detrimental to the public welfare during this emergency" in two executive orders, the state's environmental body, the Indiana Department of Environmental Management, or IDEM, has not waived any regulatory requirements as a result of COVID-19.

"IDEM will work with any source taking reasonable measures to protect human health and the environment," said Barry Sneed, IDEM's public information officer. "However, IDEM will generally not offer advance approval of noncompliance."

Sneed also said IDEM will offer "flexibility" in "exercising discretion when necessary" for "specific situations that may require flexibility."

In Texas, where Republican Gov. Greg Abbott has faced sharp criticism for his delay in issuing a statewide stay-at-home order, the governor-appointed Texas Commission on Environmental Quality said agencies may "exercise administrative relief and enforcement discretion for various reporting requirements by regulated entities."

This includes discretion for reporting on Point Source Emissions Inventory, an annual survey of chemical plants, refineries, electric utility plants and other industrial sites that meet reporting criteria based on a TCEQ emissions inventory rule; stormwater general permit reporting requirements; and Mass Emissions Cap and Trade Program reporting, which the state uses to enforce nitrogen oxide emission limits in the Houston, Galveston and Brazoria area.

"Due to COVID-19, TCEQ may exercise administrative relief and enforcement discretion for various reporting requirements by regulated entities," said commission spokesman Brian McGovern. "The executive direction sets the policy for enforcement discretion. If the agency needed a rule or statutory waiver, we would seek permission from the

governor."

TCEQ Chairman Jon Niermann said the regulator has not relaxed limits on air emissions, discharges to water or reporting requirements for breaching the limits. He also said safe drinking water and safe waste management requirements remain in place and that commission staff will continue to monitor air quality and drinking water supplies, including investigators and watermasters in the field.

"TCEQ's Executive Direction has determined that it may be inappropriate to pursue enforcement for violations that were unavoidable due to the pandemic or where compliance would create an unreasonable risk of transmitting COVID-19 or otherwise impede an appropriate response to the pandemic," Niermann said in a statement released by the agency. "Accordingly, TCEQ will consider exercising its discretion to not bring enforcement actions for such violations on a case-by-case basis. This is not a suspension of rules, such as the limited rule suspensions that have been necessary in response to other disasters."

Some Democratic governors, meanwhile, are directing their states to continue enforcing environmental regulations as normal while simultaneously siding with the EPA in offering flexibility for compliance.

Michigan's Department of Environment, Great Lakes and Energy said regulated businesses are "expected to maintain compliance with environmental regulations and permit regulations to protect Michigan's environment and public health." Even so, the group created a specific email address to field requests for "regulatory flexibility" for businesses facing "unavoidable noncompliance." Similarly, Minnesota has instituted regulatory flexibility to account for unavoidable noncompliance scenarios.

Through his disaster emergency proclamation on March 6, Democratic Gov. Tom Wolf enabled the Pennsylvania Department of Environmental Protection to adjust policy to allow for temporary suspension of regulatory requirements. The Pennsylvania DEP has also extended the time frame for providing permits.

In Oregon, while all applicable Department of Environmental Quality regulations remain in effect, the DEEQ said it would "continue to exercise reasonable enforcement discretion within its authority in making decisions regarding violations caused by pandemic-related disruptions" in response to Gov. Kate Brown's emergency declaration on March 8.

And in California, a largely blue state whose governor has been touted as an early leader in the state's response to the pandemic, the state's Water Resources Control Board has also issued guidance adjusting compliance deadlines to accommodate time extensions for regulations, permits, contractual obligations, primacy delegations and funding conditions.

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