

# CalEPA, Stepping into the Perceived Breach, Issues COVID-19 Regulatory Compliance Statement

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On April 15, 2020, the California Environmental Protection Agency (CalEPA), the umbrella agency for California's environmental boards, departments, and offices (e.g., CARB, DPR, DTSC, OEHHA, SWRCB), issued a Statement on Compliance with Regulatory Requirements During the COVID-19 Emergency (CalEPA [Statement](#)). CalEPA's Statement comes in the wake of numerous questions regarding environmental compliance obligations for California facilities impacted by COVID-19. It follows COVID-19 guidance issued by the United States Environmental Protection Agency (U.S. EPA) and various announcements by the state boards and local districts that are on the front lines of administering state, local, and federal environmental programs affecting public health and the environment, as well as companies operating facilities in California, like refineries, oil and gas terminals, mining, food processing, and other manufacturing operations.

The CalEPA Statement addresses three issues:

1. Continued operation of California's environmental boards, departments, and offices
2. Potential "compliance assistance" and what a company or other regulated entity must do to qualify for such assistance (i.e., enforcement discretion)
3. Public participation in agency rulemaking and other processes when in-person public meetings are not allowed right now

**Regulators conducting their duties:** The CalEPA Statement focuses on assuring the public that California’s environmental boards, departments, and offices are continuing to operate. Referring to studies that show a correlation between COVID-19 susceptibility and respiratory disease and multiple environmental burdens, CalEPA states that it will continue to respond, investigate, and take action on complaints related to environmental non-compliance. It goes on to confirm its commitment to fill any “enforcement gaps left by U.S. EPA’s decision to reduce environmental oversight.” The CalEPA Statement also says that CalEPA will prioritize the ongoing cleanup of contaminated sites to abate or prevent imminent threat to public health or the environment, while ensuring worker safety.

**Compliance assistance:** The CalEPA Statement indicates that state environmental regulators recognize that some entities may need “compliance assistance” due to the COVID-19 pandemic. It sets forth parameters that need to be met for such compliance assistance. Key aspects of this include that notice must be provided before the entity “fall[s] out of compliance” (emphasis added) and that the request must be “time-limited” and “specific.” The extension of deadlines is an example of a “time-delimited remedy” according to the CalEPA Statement. Requests should be made by email, given that most agency staff are teleworking.

**Public participation in agency processes:** The CalEPA Statement recognizes that there may be challenges to public participation in hearings or comment processes and states that CalEPA remains committed to conducting all public participation activities and decision-making in an equitable, inclusive, and transparent manner. It offers no further guidance on what action the regulators will or should take in this regard. The issue presents some concern for regulated entities who may have permit applications pending or other regulatory commitments that require a public hearing in order to proceed. Perhaps in recognition of this point, CalEPA states that, as the COVID-19 emergency evolves, it will continue to advise stakeholders on how it is approaching these issues.

Regulated entities will need to continue to evaluate compliance issues, federal, state, and local, on a case-by-case basis to manage risk and, as needed, fulfill obligations in industries that are essential even during the COVID-19 pandemic.

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