



AIR POLLUTION CONTROL DISTRICT
LOUISVILLE, KENTUCKY

GREG FISCHER
MAYOR

KEITH H. TALLEY, SR.
DIRECTOR

April 30, 2020

Jennifer Cave, Chair
GLI Energy and Environment Committee
614 W. Main St.
Louisville, KY 40202

Re: April 20, 2020 Letter from GLI Energy and Environment Committee

Dear Ms. Cave:

I am writing to you in response to your request that the Louisville Metro Air Pollution Control District (District) adopt the U.S. Environmental Protection Agency's (EPA) recent enforcement policy entitled "*COVID-19 Implications for EPA's Enforcement and Compliance and Assurance Program*," March 26, 2020 (Temporary Policy).¹

Under EPA's Temporary Policy, that agency will not seek penalties for noncompliance with routine monitoring and reporting requirements, if, on a case-by-case basis, EPA agrees that such noncompliance was caused by the COVID-19 pandemic. In a later letter to members of Congress clarifying the Temporary Policy, EPA explained that it established the policy to "prioritize *its* resources to respond to acute risks and imminent threats, rather than making up front case-by-case determinations regarding routine monitoring and reporting." Letter from Susan Bodine, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance to Members of Congress clarifying U.S. EPA's "*COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program*," April 2, 2020 (EPA's Clarifying Letter) (emphasis added).² Specifically, for U.S. EPA, "[t]he current COVID-19 pandemic impacts all areas of all 50 states. Making facility specific determinations at this time regarding the impact of the pandemic would truly shut down *EPA's* enforcement and compliance assurance program" because "[d]iverting *EPA* staff time to respond to individual questions about routine monitoring and reporting requirements would hinder *EPA's* ability to focus on continued protection of human health and the environment." See EPA's Clarifying Letter (emphasis added).

This is not the case in Louisville. As EPA notes in the Temporary Policy and GLI recognizes in its request, what may be appropriate at the federal level may be different at the local or state level and that delegated programs like the District's, are not required to adopt EPA's policy. Unlike EPA, the District continues its mission of protecting air quality in Louisville – its sole jurisdiction. Staff are teleworking and employing social distancing practices when field work is required. The Louisville Air Monitoring Network continues normal operations and is being maintained. Air monitoring data is available in real time at Louisville Air Watch. Odor, dust, and open burn complaints are still being taken and investigated, though direct person-to-person contact is being avoided. Permits are being drafted and issued, compliance is being monitored, and enforcement taken where appropriate. As a result, the District – again unlike

¹ Available at <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>.

² Available at <https://www.epa.gov/newsroom/april-2-2020-letters-susan-bodine-oeca-aa-feinstein-porter-quigley>

EPA – does not believe that it is necessary to generally waive its authority to exercise enforcement discretion and impose civil penalties for noncompliance with routine monitoring and reporting requirements that may result from COVID-19.

I want to be very clear – neither EPA’s Temporary Policy nor the District’s decision to extend the deadline to submit Emissions Inventory and Annual Compliance Certification submittals from April 15, 2020, to May 15, 2020 – excuse exceedances of pollutant limitations in permits, regulations or statutes that may be claimed to result from COVID-19. *See* EPA’s Clarifying Letter and the Minutes of the Louisville Metro Air Pollution Control District March 31, 2020, Special Meeting.³ In Louisville, excess emissions events must still be reported in accordance with District Regulation 1.07. That said, the District recognizes that COVID-19 measures, including travel and social distancing restrictions imposed by governments and corporations or recommended by the Centers for Disease Control and Prevention to limit the spread of COVID-19, may affect facility operations and limit the availability of key staff, necessary contractors, and laboratories to timely sample, analyze, and provide results for certain routine monitoring and reporting requirements. Regulated facilities that anticipate difficulty complying with those routine monitoring and reporting requirements identified in the Temporary Policy due to COVID-19 are encouraged to communicate with agency staff about anticipated issues. Such communication should identify the specific nature and dates of the noncompliance and explain how COVID-19 was the cause of the noncompliance. Regulated facilities must also document the decisions and actions that have been taken to act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance with routine monitoring and reporting requirements caused by COVID-19, including best efforts to comply and steps taken to conduct late monitoring or submit late reports at the earliest opportunity. Finally, instances of noncompliance must still be reported as required by applicable permit conditions and the District’s regulations whether due to COVID-19 or not.

Please assure your members that the District and its staff are always available to answer questions and address concerns, including during COVID-19. My staff and I continue to actively monitor the COVID-19 situation and have implemented a coordinated strategy across the agency to address the situation as it evolves. I hope that you will reach out to me at (502) 574-7229 if you have any questions or require any additional information.

Respectfully yours,

Keith H. Talley, Sr.
Director
Louisville Metro Air Pollution Control District

³ Available at https://louisvilleky.gov/sites/default/files/air_pollution_control_district/documents/allother/2020/20200331-board-minutes.pdf.