TO: ACIL Environmental Sciences Section Members
FR: Michael Oscar, Government Relations Director
DT: April 9, 2020
RE: Clarification of EPA Guidance on Compliance Considering COVID-19

I write today representing the American Council of Independent Laboratories (ACIL) in an effort to clarify the recent guidance from the U.S. Environmental Protection Agency (EPA) highlighting EPA’s COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program. The guidance was in a Memorandum dated March 26, 2020 from Susan Parker Bodine, Assistant Administrator for Enforcement and Compliance Assurance. Our objective is to provide clarification of the EPA message and its impact on the customers of our members.

ACIL is an association representing independent commercial scientific and engineering firms with over 1,000 facilities across the U.S. engaged in testing, product certification, consulting, and research and development to enhance public health and safety.

EPA’s memorandum was interpreted differently by different parties, but it clarified the requirement for continual monitoring and testing of all environmental systems during this recent pandemic. ACIL has confirmed through its membership that there is more than adequate laboratory capacity available to conduct these testing and monitoring functions as outlined in the EPA memorandum. ACIL members have taken additional steps to maintain uninterrupted operations during this national crisis. The EPA memorandum makes the following key points:

- The EPA will apply enforcement discretion if compliance is not possible due to limited capabilities to comply that are a result of COVID 19.
- The policy does not apply to activities that are carried out under Superfund and RCRA Corrective Action enforcement instruments.
- The policy does not apply to imports, specifically to pesticide products.
- The policy makes clear that entities should make every effort to comply with their environmental compliance obligations. If compliance is not reasonably practicable, the cause, nature and dates of noncompliance must be documented, including best efforts to comply.
- Entities must return to compliance as soon as possible.
- Documentation on reasons for non-compliance and efforts made to comply must be sent to the agency.
- This EPA policy does not impact local and State regulatory requirements, which may not offer enforcement discretion.
- Digital or electronic signatures on compliance reports are acceptable.
- Facilities must contact the appropriate implementing authority (federal, state or local) if facility operations impacted by the COVID-19 pandemic may create an acute risk or an imminent threat to human health or the environment.
- If a facility suffers from the failure of a treatment system that may result in exceedances of enforceable limitations, it must notify the implementing authority as quickly as possible.
- Public water systems have a heightened responsibility to protect public health and are not released from their compliance responsibilities.
- The EPA is continuing ongoing enforcement measures.

ACIL and its member laboratories are a key resource to maintain compliance and avoid risk in accordance with the EPA’s COVID-19 guidance. ACIL member laboratories are adequately prepared to carry out the necessary testing to ensure that regulated facilities are operating within their permits and standards to protect public health and the environment. Thank you for your efforts to maintain the public’s health during this COVID-19 pandemic. Please do not hesitate to call upon me if you have any questions about the EPA COVID-19 guidance memorandum.