



Medical Waste & COVID-19: Important Developments

MARCH 26, 2020

[Gwen Keyes Fleming](#), [Marlys Palumbo](#), [A.J. Singletary](#)

Update as of March 26, 2020 – 7:30 pm: Shortly after this alert was published, EPA announced a [temporary policy](#) regarding agency discretionary enforcement of environmental legal obligations during the COVID-19 pandemic. The policy allows for enforcement discretion for certain civil violations, including those related to routine compliance monitoring and reporting by regulated entities, settlement agreement and consent decree reporting obligations and milestones, facility operations, public water systems regulated under the Safe Drinking Water Act, and critical infrastructure. The policy also includes special provisions for state oversight, EPA-specific actions, accidental releases, and criminal violations.

Relevant to this alert, EPA states in the policy that if a facility is a generator of hazardous waste and, due to disruptions caused by the COVID-19 pandemic, is unable to transfer the waste off-site within the time periods required under the Resource Conservation and Recovery Act (RCRA) to maintain its generator status, then the facility should continue to properly label and store such waste and take certain environmental compliance steps to document the excused noncompliance. In this fashion, EPA may treat such entities as hazardous waste generators and not treatment, storage, and disposal facilities. EPA will additionally treat Very Small Quantity Generators and Small Quantity Generators as retaining that status, even if the amount of hazardous waste stored on site exceeds a regulatory volume threshold due to COVID-19 materials.

The policy emphasizes the actions a regulated entity must take when compliance with regulatory obligations is "not reasonably practical." These actions include minimizing the effects and duration of any noncompliance caused by COVID-19 and documenting the nature and dates of non-compliance as well as "best efforts" taken to comply at the earliest opportunity.

Importantly, the EPA policy applies to federal actions, and indicates authorized states or tribes may take a different approach to any non-compliance under their own authorities. The policy applies retroactively beginning on March 13, 2020 and the agency will provide the public seven days' notice before terminating the policy in the future.

COVID-19 is impacting every aspect of daily life. Individuals, communities, as well as the public and private sectors are all determining an appropriate response to the pandemic. The handling of medical waste due to COVID-19 is no different. Typically, regulations require segregation of regulated medical waste from ordinary solid waste and a special treatment process to render it non-infectious before final disposal. Medical waste produced from the COVID-19 outbreak may include needles and sharps; material contaminated with bodily fluids like gauze, gloves, or gowns; pathological wastes; and pharmaceutical wastes.

This alert explores current issues to watch related to the management of COVID-19 medical waste, specifically regarding federal agency actions and happenings at the state and trade association levels. While federal and state regulations have largely directed waste managers to follow existing regulations in the COVID-19 era, additional guidance is necessary given issues such as the expected increase in volume of medical waste due to the virus.

Van Ness Feldman's leading [Waste & Hazardous Substances Practice](#) stands at the ready to assist clients with any issue regarding medical waste management during the COVID-19 pandemic.

Actions at the Federal Level

Shelter-in-place orders around the country have largely exempted waste managers, as the continued operation of solid waste management is considered an essential service. However, the issue extends

beyond waste management to questions of how COVID-19 medical waste is handled. Four federal agencies with missions that touch the issue are worth noting—the Occupational Safety and Health Administration (OSHA), the Department of Homeland Security (DHS), the Centers for Disease Control and Prevention (CDC), and the Environmental Protection Agency (EPA).

Occupational Safety and Health Administration (OSHA): Last week, OSHA [released guidance](#) for solid waste related to COVID-19. Regarding medical waste with potential or known COVID-19 contamination, the guidance says that the waste is to be managed like any other regulated medical waste, as COVID-19 is not a Category A infectious substance. Regarding municipal waste and recycling, the guidance states that workers and employers should manage household and business solid waste with potential or known COVID-19 contamination like any other contaminated municipal waste, and use typical engineering and administrative controls, safe work practices, and personal protective equipment (PPE) to prevent worker exposure to recyclable materials managed, including any contaminants in the materials. Regarding wastewater, the guidance explains that coronaviruses are susceptible to the same disinfection conditions in the healthcare setting as other viruses, so current disinfection conditions in wastewater treatment facilities is expected to be sufficient.

Department of Homeland Security (DHS): The Cybersecurity and Infrastructure Security Agency (CISA) within DHS has [released a memorandum](#) that declares a list of “essential critical infrastructure workers” to protect communities while ensuring continuity of functions critical to public health and safety, as well as economic security. This list includes managers of hazardous waste and workers managing medical waste, workers managing waste from pharmaceuticals and medical material production, and workers at laboratories processing test kits, all of which apply to the COVID-19 response. While the CISA document emphasizes that it is only guidance and the decisions about the continuity of operations during this time are left to state and local governments, the document clearly emphasizes the priority our federal government puts on ensuring that hazardous and medical waste is properly managed even during these challenging times.

Centers for Disease Control and Prevention (CDC): The CDC [has determined](#) that medical waste generated in the treatment of COVID-19 patients and patients under investigation (PUIs) be managed in accordance with routine procedures – as such medical waste is no different than waste coming from facilities without COVID-19 patients. The CDC has stated that medical waste from COVID-19 should be managed as a Category B waste, following treatment and disposal methods used for most other potentially infectious medical waste materials.

Environmental Protection Agency (EPA): EPA has thus far [released limited information](#) regarding COVID-19 and medical waste. The agency noted that the CDC has the lead on releasing updated information and guidance. However, EPA has posted information regarding disinfectants, drinking water, and wastewater. As EPA manages federal requirements under the Resource Conservation and Recovery Act (RCRA), it is expected that the agency will release further guidance regarding medical waste related to COVID-19.

Actions at the State Level

As medical waste regulations are often promulgated by state environmental and health departments, many states are releasing guidance related to COVID-19. Three such states are California, New York, and Texas.

California: California has [provided general guidance](#) for the management of COVID-19 contaminated medical waste based largely on federal guidelines and standards outlined above. The state notes that as of March 16, 2020, there are no additional regulatory handling, marking, storage, transportation, or treatment requirements of medical waste contaminated with COVID-19, though waste managers must still follow the requirements of California’s Medical Waste Management Act.

New York: Similar to California, New York has [given direction](#) stating that waste contaminated with COVID-19 should be treated routinely as regulated medical waste, that personal protective equipment (PPE) should be used when handling this waste, and that federal standards should apply.

Texas: Texas has [released further information](#) addressing the definition of medical waste, medical waste treatment methods under the Texas Department of State Health Services, medical waste facilities regulated by Texas Council on Environmental Quality (TCEQ), managing COVID-19 medical waste from healthcare facilities following CDC and World Health Organization (WHO) recommendations, and managing COVID-19 medical waste from residents and businesses.

Actions Among Trade Associations

Trade associations have taken actions to provide guidance to its members during this time of uncertainty. The National Waste and Recycling Association's (NWRA) Healthcare Waste Institute published a [COVID-19 FAQs document](#) to address safe handling of waste during the outbreak, and the Solid Waste Association of North America (SWANA) also released [COVID-19 guidance](#) for its members.

Additionally, NWRA sent a [letter to the Federal Highway Administration \(FHWA\)](#) requesting that the agency provide guidance to states to issue special weight permits during the COVID-19 pandemic, as well as a [letter to state agencies](#) seeking temporary exemptions to certain handling requirements for managing waste and recycling during the state of emergency.

FOR MORE INFORMATION

As noted above, Van Ness Feldman's leading [Waste & Hazardous Substances Practice](#) is prepared to assist with any issue related to medical waste in the COVID-19 pandemic, or any waste issue more generally. The firm has broad experience solving challenges associated with hazardous and solid waste materials management, including under the Resource Conservation and Recovery Act (RCRA) and all parallel state and local equivalents. The firm counsels leading industrial and manufacturing companies, as well as major industry coalitions and associations, in significant regulatory and environmental liability issues.

If you would like more information about medical waste in the era of COVID-19 or have any questions regarding waste, please contact [Gwen Keyes Fleming](#) or [Marlys Palumbo](#), or any member of the firm's [Waste & Hazardous Substance Practice](#) in Washington, D.C. at (202) 298-1800 or in Seattle, WA at (206) 623-9372.

Follow us on Twitter [@VanNessFeldman](#)

© 2020 Van Ness Feldman, LLP. All Rights Reserved. This document has been prepared by Van Ness Feldman for informational purposes only and is not a legal opinion, does not provide legal advice for any purpose, and neither creates nor constitutes evidence of an attorney-client relationship.