

COVID for Retail Environmental Compliance Professionals

Leading Practices, Resources, and the Latest on Compliance Implications Part II



**RETAIL INDUSTRY
LEADERS ASSOCIATION**

April 10, 2020

EPA's Regulatory and Enforcement Response to the COVID-19 Crisis

RILA –Environmental Compliance Committee Webinar

Allyn Stern

April 10, 2020



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Agenda

Retailer Responsibilities Under FIFRA

New EPA Policies to Expedite Products into the Marketplace

EPA COVID-19 Enforcement Approach

Retailer Responsibilities Under FIFRA



FIFRA Framework



Pesticides sold or distributed in the U.S. must be registered with EPA



Label must be approved by EPA and contain approved claims



Advertising, promotional statements, including social media must be consistent with regulatory requirements

Pesticide Devices

Work by physical means, such as electricity, light, or mechanics and don't contain a pesticide substance or mixture

EPA does not review efficacy data for pesticide devices prior to their distribution or sale.

Some devices may be misbranded, making general or specific efficacy claims that are "false or misleading in any particular"

Producers and sellers are responsible for ensuring their products perform as claimed.

Retailer Responsibilities under FIFRA

Retailers “sell or distribute” products that make pesticide claims (e.g. to sanitize or disinfect)

- Private label products
- Products purchased from a manufacturer for sale to customers
- Products distributed to store locations for in-store cleaning and disinfecting

Advertising or other marketing material that make pesticide claims

- Products claiming anti-coronavirus properties

Obstacles Created by COVID-19

Greater demand for disinfectants and limited supply

FIFRA timeframe for approving products inconsistent with immediate need

Opportunities for fraud rampant in marketplace

Impact on Retailers

Retailers need increased access to approved products for sale and in-store use

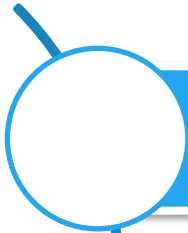
Retailers are responsible for fraudulent products

- EPA has contacted retailers to ask for cooperation and expects results
- EPA will aggressively pursue import and labeling violations relating to COVID-19
- EPA's expectation for retailers is high



New EPA Policies to Expedite Products into the Marketplace

Expedited Approval of Anti-Coronavirus Claims for Disinfectants



EPA expediting approval of anti-coronavirus claims for registered disinfectants



EPA expediting review and approval of new disinfectant products

Emerging Viral Pathogens Designation Allows Expedited Approval for Registered Products

Adapting 2016 policy for certain hospital, healthcare, or broad-spectrum disinfectants

Pre-registration no longer required

Non-label claim that product may be used against an emerging virus



Adding Anti-Coronavirus Claims

Expedited 90-day review under FIFRA Section 3(c)(3)(B)(ii) OR Label amendment request under PRIA-4

No new efficacy data submitted

EPA allowing for pre-registered and non pre-registered products

Non-label statement indicating efficacy "against viruses similar to SARS-CoV-s"



Tailored Information Required to Expedited Approval



Explain why product meets EPA's criteria for use against a particular viral pathogen group



After approval, designated statement is added to the product's master label as a "non-label" claim



Registrants should not include other label changes



EPA may add additional conditions or terms

Streamlined Process For Sourcing Inert Ingredients

EPA allowing “commodity” inert ingredients from different suppliers without prior notice to EPA

280 different ingredients

Manufacturer can change formula to include inert ingredients without identifying the supplier name and address for each ingredient

Manufacturers can source ingredients from different suppliers without notifying EPA.

Streamlined Process for Sourcing Active Ingredients

Will Make List N Disinfectants More Available

Manufacturers can obtain commodity active ingredients from different suppliers without first requiring a registration amendment

Notification required, but agency approval not needed in advance

Only applies to registered disinfectant products on List N

Only applies to 8 widely available and easily manufactured ingredients



EPA Will Strictly Enforce Unlawful Pesticide Claims



Expect EPA to be scrutinizing, skeptical, & unforgiving on enforcement

Holding retailers responsible

Retailers also responsible for online 3rd party sellers

Retailers Should Be Proactive

Monitor retail products sold or distributed to ensure anti-coronavirus products contain an EPA registration

Remove unregistered products from availability

Monitor marketing material

Check List N for registered products

Purchase from trusted suppliers



EPA COVID-19 Enforcement Approach



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

March 26, 2020

MEMORANDUM

SUBJECT: COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

FROM: Susan Parker Bodine *Susan Parker Bodine*

TO: All Governmental and Private Sector Partners

As all of us at the U.S. Environmental Protection Agency adjust to the evolving COVID-19 pandemic, we are first and foremost mindful of the health and safety of the public, as well as our staff, and those of Federal Agencies, State and Local Governments, Tribes, Regulated Entities, Contractors, and Non-

Enforcement Discretion is Different than a No Action Assurance

Enforcement Discretion

- EPA chooses to allow a violation to go unenforced

No Action Assurance

- EPA confirms that it will not pursue a violation

EPA's Policy: What it Does

Identifies categories of noncompliance likely to receive enforcement discretion



Routine non-compliance v. more serious violations
Live training and "wet" certification
RCRA storage requirements can be relaxed



Policy Does Not Apply To:

Not a license to pollute

Does not apply to pesticide imports
or fraudulent COVID-19 claims

CERCLA or RCRA Corrective Action

Accidental release reporting

Regulated Entity Retains Burden

Burden remains on the regulated entity to document and justify COVID-19 related reason for noncompliance

EPA does not provide a no action assurance

- Will utilize enforcement discretion if agency agrees that noncompliance is justified
- May pursue violation if agency does not agree noncompliance is justified

Traditional v. COVID-19 Crisis Approach

Traditional

- Agency typically does not state whether it will use enforcement discretion
- No Action Assurances & Force Majeure sparingly applied
- Resource-intensive case by case decision

COVID -19

- Agency prioritizes acute risks and imminent threats
- Increased likelihood of enforcement discretion and force majeure
- No Action Assurances sparingly applied
- Conserves agency resources

Documentation Required to Receive Enforcement Discretion

Best efforts to minimize the effects and duration of noncompliance

Specific nature and dates of the noncompliance

Explain how COVID-19 was the cause of the noncompliance

Decisions and actions taken in response to the delay

Best efforts to comply

Steps taken to come into compliance at the earliest opportunity



Information to Have Available

Identify what the COVID-19 impacts are and when they began

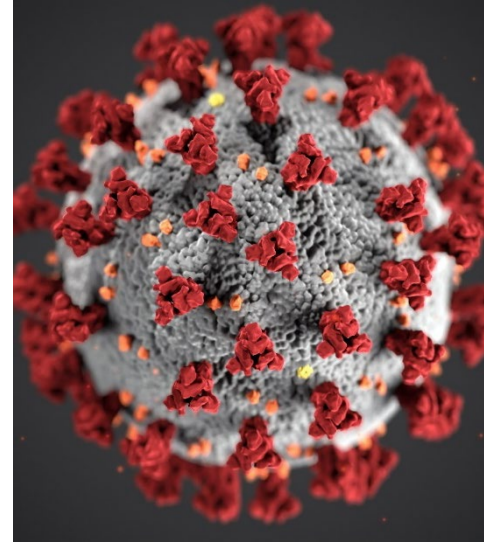
Know the scope of shelter in place declarations or executive orders

Identify efforts to minimize noncompliance

Specifically connect COVID-19 impacts to the noncompliance

Stay up to date on changing policies and directives

Return to compliance as soon as possible



Leading Practices for Documentation



Contemporaneous



Develop an easy to use system to capture email and important decisions



Email etiquette applies – what you say can appear on the front page of the NYT



Save according to company recordkeeping practices but at least for five years (SOL in most instances)



Don't overstate your case

State and Tribal Enforcement Discretion

- EPA Policy does not apply
 - States can pursue violations even if EPA does not
 - EPA can pursue violations even if state does not
- Many states are issuing their own statements or guidance
- Some states, e.g. CA, not providing any indication of discretion in advance
- Many states indicate flexibility and require documentation

Citizen Enforcement



**EPA Policy
does not
apply**



**Petition to
EPA requiring
disclosure of
violations**



**Expect
citizen
groups to
actively
monitor
facilities they
are
interested in**



**Expect FOIA
requests for
information**

Discussion and Questions



Thank you!



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Employee and facility safety for pandemics

Friday, April 10, 2020



Today's speaker



Eric Glass, CSP

Senior risk and safety advisor

Eric.Glass@ul.com

- Delivers EHS expertise throughout multiple UL business units
- 25 years in the risk management, loss control and safety industry
- Bachelor of Science: Risk Management & Insurance, Florida State University



RELEVANT EXPERIENCE

Federated Insurance

- **Hazard analysis:** Performed hazard identification and analysis for national accounts with high self-insured retention programs
- **Program development:** Advised clients on program development based on hazards and exposures specific to their specific and industry exposure

Landrum-Yaeger & Associates

- **Risk management:** Developed risk management and insurance plans to ensure all operational risks were addressed and mitigated through risk control, risk financing or risk avoidance

United States Navy

- **Leadership:** Trained, developed and lead explosive ordnance teams in high-hazard environments (aircraft carrier flight deck and weapons storage areas)

UL OPERATES IN
MORE THAN
143
COUNTRIES



AND ACROSS
MORE THAN
20
INDUSTRIES

UL MARKS APPEAR on more than
22 BILLION
PRODUCTS GLOBALLY



UL has helped to set
MORE THAN
1600

standards defining safety,
security, quality and sustainability



**SCIENCE & GLOBAL
EXPERTISE**

UL SOFTWARE IS USED BY

10,000+ 



**ORGANIZATIONS IN
OVER 10 INDUSTRIES**



**UL WORKS TO PROTECT THE MARKET
FROM COUNTERFEIT GOODS**

IN 2015 UL PARTICIPATED IN 506 SEIZURES, ELIMINATING MILLIONS
OF DOLLARS OF COUNTERFEIT PRODUCTS FROM THE MARKET

UL SERVES

1 OUT OF 3

FORTUNE 500 COMPANIES



Employee health and safety during COVID-19



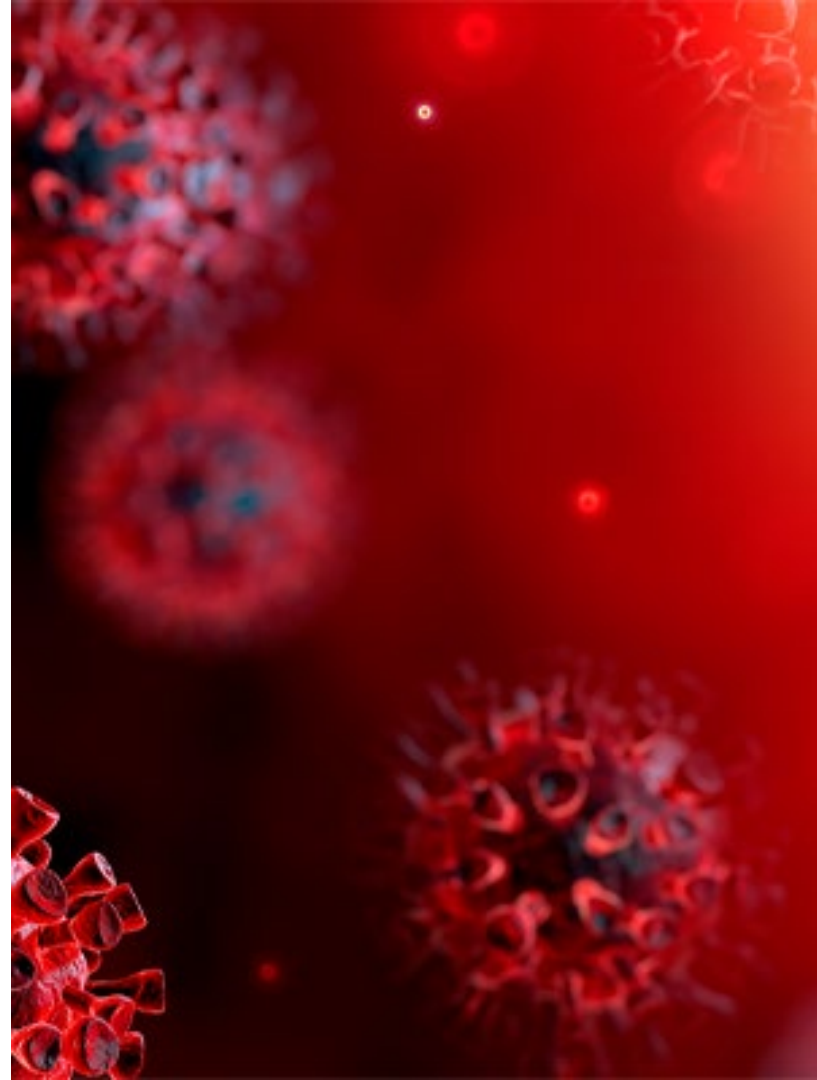
Response to COVID-19

Highlights of internal UL response

- Developed global cross-functional response team
- Facility sanitization efforts
- Developed WFH guidance, CEO regular communications, mental health support


UL response for industry

- Created emergency guide for clients impacted by COVID
- Expediting testing services (ex. masks, temporary healthcare facilities)
- Webinars – employee occupational health and pandemic response buildings
- Developing online training for employee safety specific to COVID-19











Employee safety

- Reporting health status critical (now required by OSHA)
 - Tools for tracking encounters and surveillances
- Share important information from CDC and WHO, company-specific information
- Shift from in-person learning to e-learning
 - How do you track?

Learning Activity: Types of Respirators 

Drag each description to the image of the respirator it matches.

Filters out chemical gases as you breathe	Uses its own air tank to supply clean air	Cleans particles out of the air as you breathe
		
Particulate Respirator	Chemical Cartridge/ Gas Mask Respirator	Self-Contained Breathing Apparatus

Progress Meter     

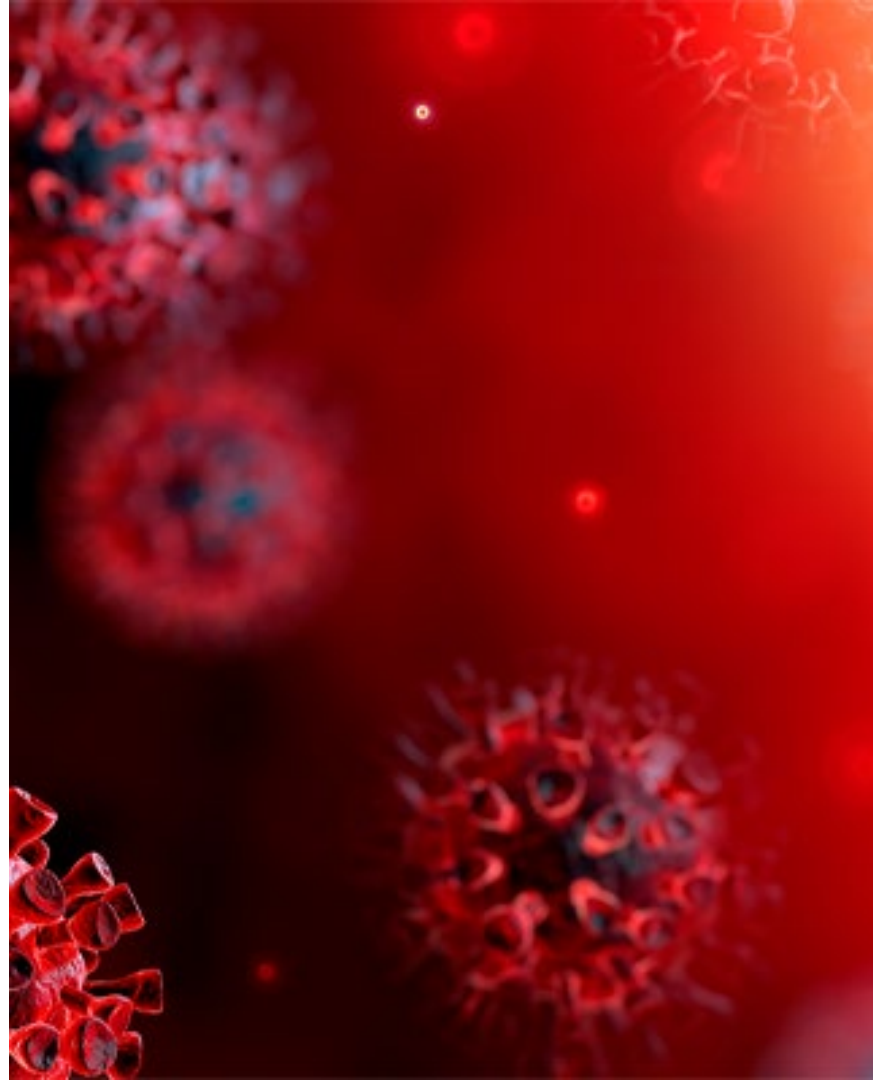
“An organization’s ability to learn, and translate that learning into action rapidly, is the ultimate competitive advantage”.

– Jack Welch, former CEO, General Electric



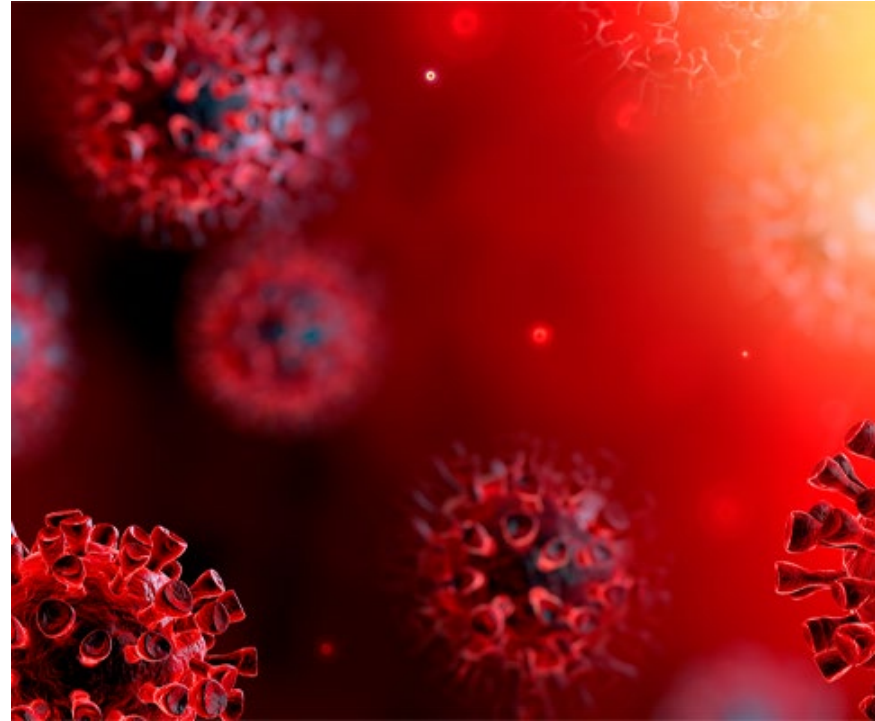
New normal considerations

- How will you prepare for a vaccine?
- How can you support employee needs (physical and emotional)?
- Is your employee safety program built to handle future events?
- Do you have the tools you need to manage occupational health?



Preparing for the “new normal”

- Start reevaluating current SOPs. Do they align with recommending cleaning guidelines?
- Conduct job description reviews
- Review past Job Hazards Analyses (JHAs)
- Examine your employee communication channels. Are they effective?
- Educate your staff on new procedures
- Prepare plans to re-open facilities

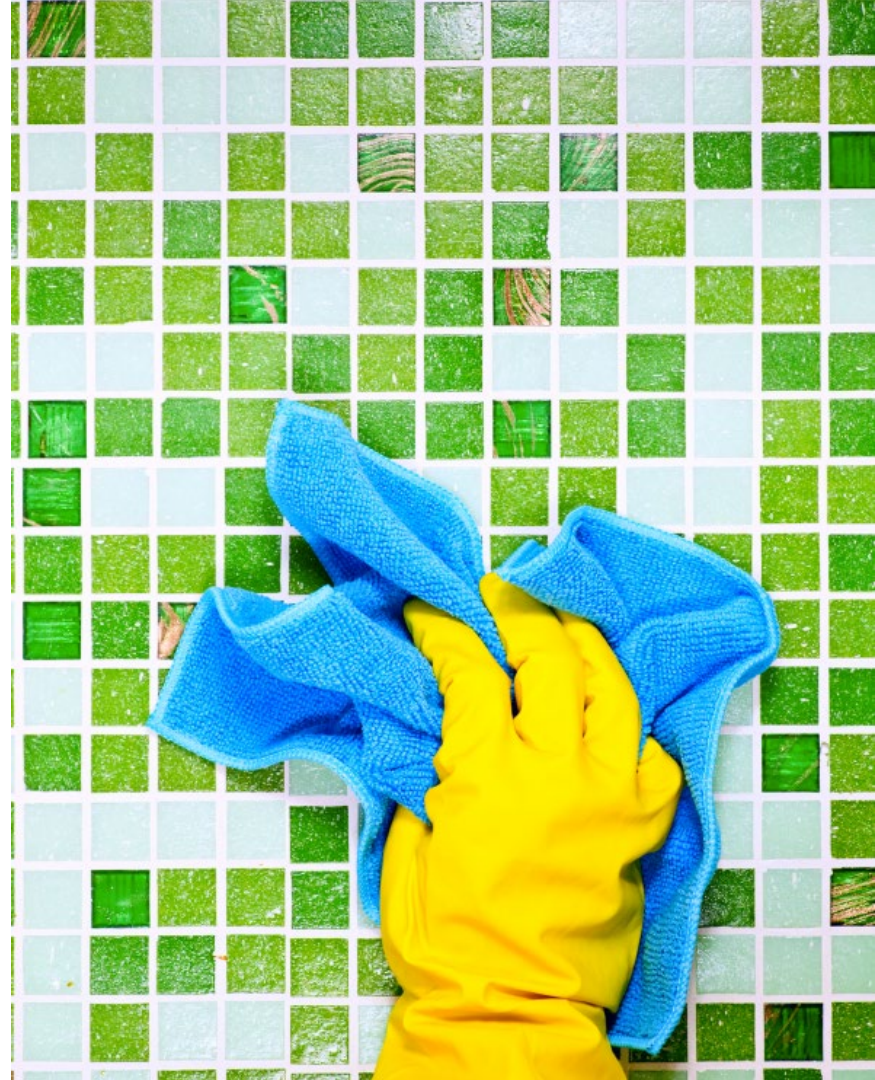


Pandemic response for buildings



Janitorial leading practices

- Accepted cleaning practices for commercial office space
- Choosing the right janitorial service after an outbreak
- Recommended cleaning protocol after a positive COVID-19 case
- What is the new normal for janitorial practices in the future?
- Building testing for COVID-19



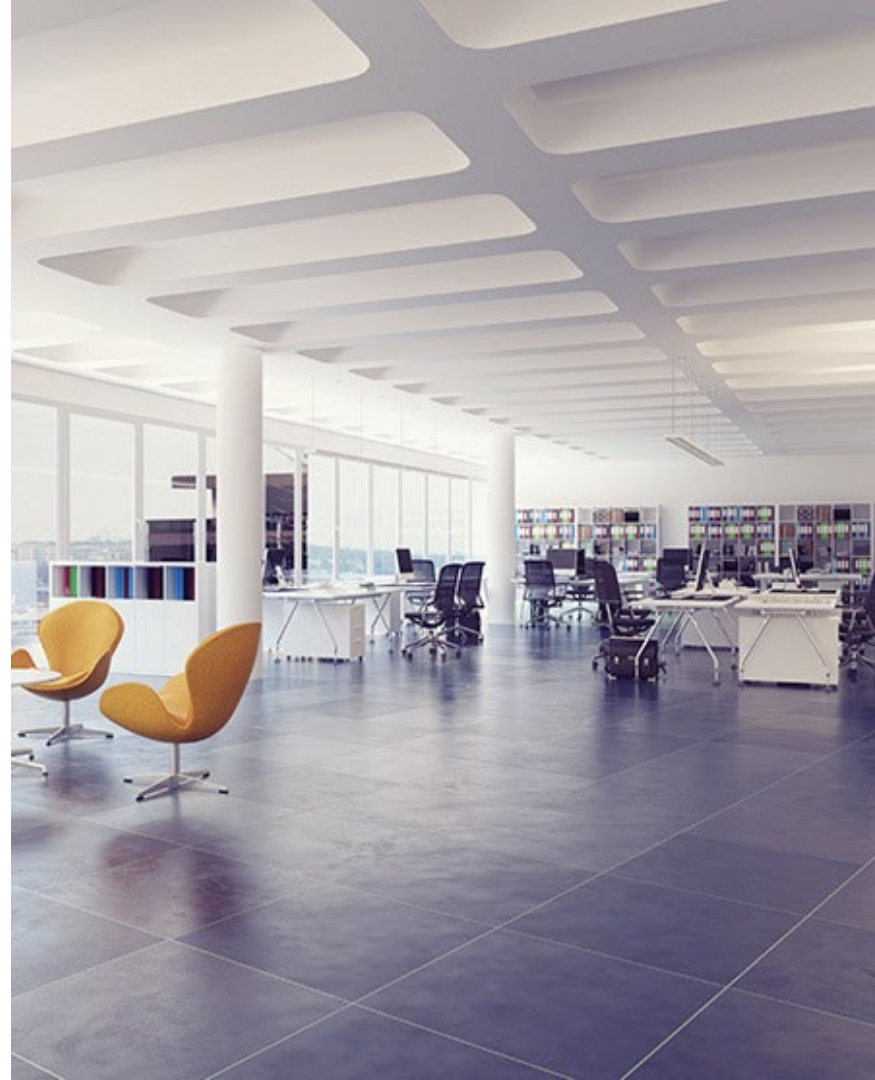
HVAC systems – engineering controls

- Appropriate filter efficiencies
- Effectiveness of increased air changes
- Dilution ventilation and filtration considerations
- Limitations for upgrading filtration for buildings with good filtration
- Effectiveness of proactive duct cleaning



Unintended consequences

- Impact of vacant buildings on indoor environmental quality
- Water quality, potential leaks and mold
- Stress on HVAC systems when buildings are re-occupied



Applicable agency guidelines



American Society of Heating, Refrigerating and Air-Conditioning Engineers



International Sanitary Supply Association



Occupational Health and Safety Administration



Communication and resources

AGENCIES:

[Centers for Disease Control \(CDC\)](#)

[World Health Organization \(WHO\)](#)

[National Institutes of Health \(NIH\)](#)

COVID-19 RESOURCES:

[COVID-19 Business Response](#) (CDC)

[COVID-19 Main Page](#) (CDC)

[COVID-19 Main Page](#) (OSHA)

[Guidance for Businesses/Employers](#) (CDC)

[Guidelines for America](#) (WH.gov)

[Frequently Asked Questions](#) (CDC)

[High Risk Individuals](#) (CDC)

[International & Domestic Travel](#) (CDC)

PRINTABLE RESOURCES:

[COVID-19 Graphics/Images](#) (CDC)

[COVID-19 Guidelines for America](#) (WH.gov)

[Guidance for Preparing Workplaces](#) (OSHA)

[Share the Facts](#) (CDC)

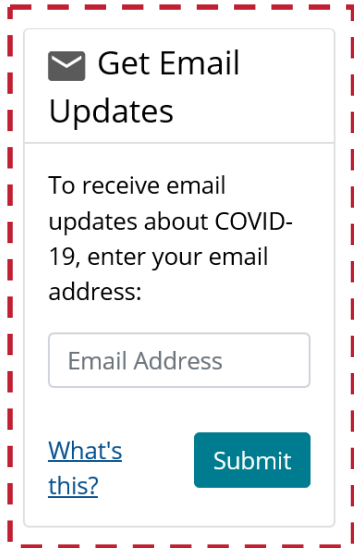
[Stopping the Spread of Germs PDF](#) (CDC)

[Symptoms PDF](#) (CDC)

[What To Do If Sick](#) (CDC)

[What You Need To Know](#) (CDC)

[10 Things: Possible/Confirmed PDF](#) (CDC)



The image shows a registration form for COVID-19 email updates. It features a dashed red border. At the top left is a mail icon and the text 'Get Email Updates'. Below this is a text box for 'Email Address' and a blue 'Submit' button. A link 'What's this?' is located at the bottom left of the form.

Click [HERE](#) to register for COVID-19 updates from the CDC (bottom left of page)

Free UL course access

- Infection Control – Handwashing
- Coronavirus Disease 2019
- Pandemic and Influenza

[Click here to access UL's free pandemic awareness courses](#)



“Safety is not the absence of event, it’s the presence of defenses.”



Questions?

Contact us:

Name: Eric Glass

Email: Eric.Glass@ul.com

Name: Andrew Sousa

Email: Andrew.Sousa@ul.com





Thank you

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COVID-19 Decontamination and Preventative Cleaning Response Team Considerations

Get To Know US Ecology

Our Mission

To provide safe and compliant solutions to protect human health and the environment.

What We Do

Provide a broad array of environmental and response services to commercial and government customers each and every day:

- COVID-19 response
- Waste treatment
- Recycling and disposal
- Industrial cleaning
- Field services
- Remediation
- ER services

Who We Are

A team of highly trained professionals delivering service excellence by managing complex waste management and response needs.



National Footprint

North American Leader



Decontamination vs Preventative Cleaning

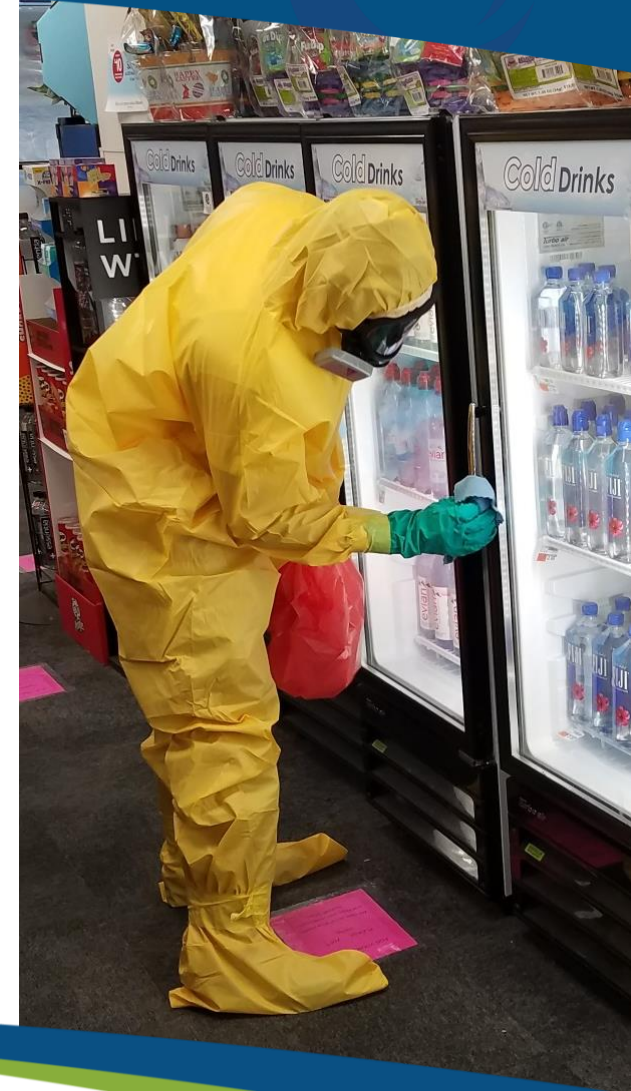
- **Decontamination:** disinfecting of areas impacted by or exposed to **suspected or confirmed cases** of COVID-19
- **Preventative Cleaning:** preemptive cleaning of areas with no known or suspected COVID-19 (highly recommended to reduce the risk of COVID-19) for peace of mind

	Decontamination	Preventative Cleaning
Known or suspected case of COVID-19	X	
Urgent or immediate response	X	
Planned or scheduled	X	X
Proactive for safety and peace of mind		X
Flexibility in hours performed (Ex: after store closes)		X
Level C PPE recommended	X	
Modified Level C PPE recommended		X
Three stage decontamination process	X	
Single stage decontamination process		X
Includes deep cleaning of floor and other specified items at direction of customer representative	X	
Potential disposal of perishable or consumable products	X	
Typically performed at lower cost		X

Proven Operational Guidelines for Success

Key Components for Operational Success:

- Evaluate and understand scope and develop a customized plan
- Project personnel review SOPs and Activity Hazard Assessments (AHAs) daily and if any major changes occur to scope
- Utilize standard operational guidelines and recommendations from regulatory agencies (e.g. CDC and WHO)
- Methodologies of both Contamination and Preventative Cleaning vary, but can consist of any of the following:
 - Methodical surface wipe down of horizontal surfaces and high traffic/touch point areas
 - Portable fogger machines with decontamination solution
 - Portable Hydrogen Peroxide Disinfectant System: state-of-the-art technology and system
 - Proper consolidation, transportation and disposal of all waste including used PPE



Training is Key

When considering response providers:

- Ensure response personnel have applicable training
- Ensure response personnel have proven experience with biohazards (e.g. prior H1N1, SARS, Ebola)

Recommended training includes:

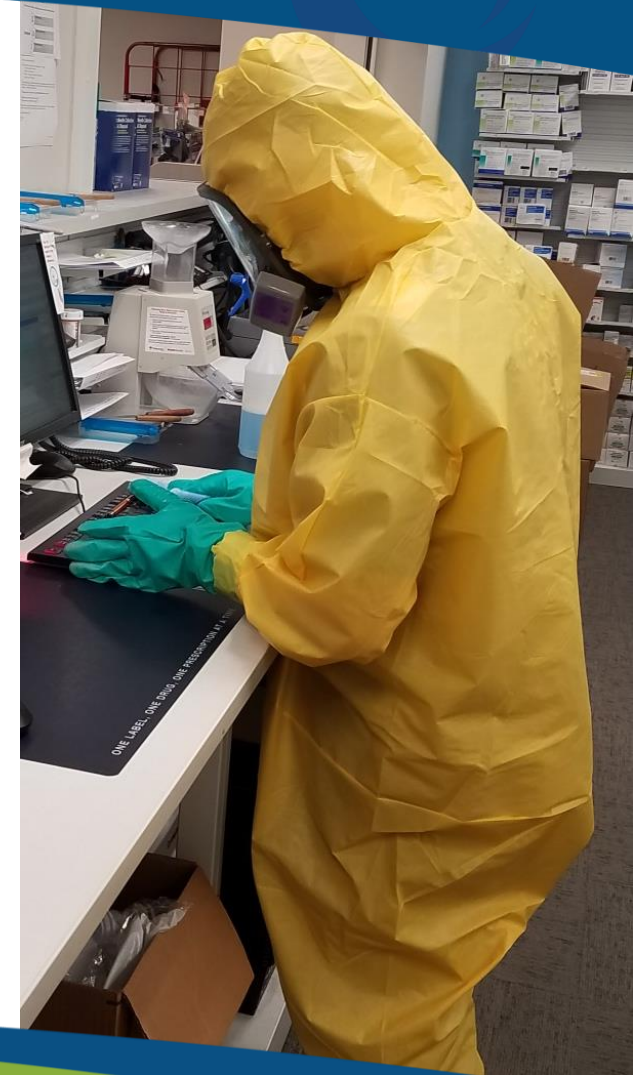
- Standard operational guidelines based on CDC, OSHA and WHO recommendations
- 40-Hour OSHA HAZWOPER training and 8-hour annual refresher
- Bloodborne pathogens training
- Etiological (bio/infectious hazard) response training



Experience Drives Excellence

Training is required but experience is critical!

- Understanding the scope and facility layout to establish well-defined control zones
- Donning and doffing PPE correctly
- Experience wearing PPE (masks, impermeable suits)
- More experience equals more efficiency (less time, less waste, less money)
- Experience equals safety
- Proven decontamination methods using EPA approved hospital-grade disinfecting agents



PPE and Medical Screening Requirements

- Recommended PPE:
 - Decontamination: Level C
 - Preventative Cleaning: Modified Level C
- Regulatory requirements to wear proper PPE:
 - HAZMAT physicals
 - Pulmonary function test
 - Respiratory fit-test



Key Questions to Ask a Response Provider

- Do you offer biohazard decontamination as a standard service?
- Were you involved in prior infectious disease decontamination efforts?
- Do you have a 24/7/365 hotline for immediate response?
- Do you follow standard operational procedures and guidelines?
- Do you have a Certified Industrial Hygienist (CIH) on staff?
- Do you perform medical monitoring (Ex: heat stress)?
- Do you have a large geographical coverage area?
- Do you have personnel bench strength to perform multiple projects at one time?
- Do you have access to adequate PPE and supplies?
- Can you cascade resources to heavily impacted areas if necessary?
- Can you properly transport and dispose of various waste streams generated from cleaning efforts?
- Can you provide industry standard insurance, indemnification and financial stability?

Yes No





Questions?



For More Information:

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Vice President Business Development - National Programs

Vince.scheerer@usecology.com

Or call the US Ecology 24/7 COVID-19 Hotline:
(800) 899-4672



US ecologySM

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