

EPA Announces Temporary Enforcement Policy for COVID-19 Pandemic

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PRACTICE AREAS

- Environmental Regulation
- Environmental, Energy & Land Use
- Land Use Regulation

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On March 26, 2020, the Assistant Administrator for the Office of Enforcement and Compliance Assurance of the United States Environmental Protection Agency (“EPA”) issued a Memorandum addressing the enforcement of the agency’s environmental obligations during the COVID-19 pandemic. In it, the EPA announced that it will, as a “temporary policy”, exercise its discretion when enforcing noncompliance “resulting from the COVID-19 pandemic,” following the guidelines, conditions and requirements established in the same (“Temporary Policy”).

The Temporary Policy does not apply to “imports” (e.g. pesticides) and criminal violations. It also does not apply to “activities carried out under Superfund and RCRA enforcement instruments,” which will be addressed separately. EPA will enforce its discretion under the Temporary Policy only if the regulated entity demonstrates that it made every effort to comply with their environmental compliance obligations. If compliance is not reasonably practicable, the regulated entity must comply with certain conditions listed in Section I(A)(2) of the Memorandum, which include, (1) identification of the specific nature and date of the noncompliance, and (2) an explanation of “how COVID-19 was the cause noncompliance, and the decisions and actions taken in response,” and best effort and steps taken to come into compliance the earliest opportunity.

Facilities subject to annual and/or bi-annual reporting and monitoring are expected to resume compliance activities as soon as possible, once the Temporary Policy is no longer in effect, including conducting late monitoring or submitting late reports. In some reporting forms there are sections or codes in which a facility may indicate why it has not conducted the required sampling and monitoring. EPA encourages facilities to include such information when submitting any late reports.

The following are some of the issues addressed in the Temporary Policy:

- Routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification

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- Reporting obligations and milestones in connection with EPA administrative settlement agreements and consent decrees entered with the EPA and the U.S. Department of Justice
- Facility operations impacted by the COVID-19 which may create an acute risk or an imminent threat to human health or the environment due to the pandemic
- Failure of air emission control, wastewater or waste treatment systems or other facility equipment that result in exceedances of enforceable limitations on emissions to air or discharges to water, or land disposal, or other unauthorized releases
- Hazardous waste generators who are not able to transfer wastes off-site within the time periods required under RCRA due to the pandemic.
- Public water systems regulated under the Safe Drinking Water Act
- Facilities considered as essential critical infrastructures

The Temporary Policy does not relieve any entity from the responsibility to prevent, respond to, or report accidental releases of oil, hazardous substances, hazardous chemicals, hazardous wastes and other pollutants, as required by federal law.

This policy will apply retroactively beginning on March 13, 2020. Notice will be issued by the EPA at least seven days prior to its termination.

You can read the full Memorandum [here](#).

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