

Greetings,

On March 26, 2020 the U.S. Environmental Protection Agency (EPA) issued a policy memorandum indicating that it will exercise enforcement discretion for any noncompliance that may result from the COVID-19 pandemic, provided that regulated entities take the steps that are set forth in the policy. A copy of the memorandum with more details on the policy is available at <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>. EPA's announcement of the enforcement discretion policy is also provided below.

With respect to the scope and applicability of the enforcement discretion policy, EPA laid out some brief summary points.

- The enforcement discretion policy is temporary to accommodate regulated entities impacted by the unusual circumstances that are presented as a result of the COVID-19 pandemic. EPA will assess the continued need for and scope of this temporary policy on a regular basis and will update it if the EPA determines modifications are necessary.
- This policy will apply retroactively beginning on March 13, 2020.
- The enforcement discretion does not apply to any criminal violations or conditions of probation in criminal sentences.
- This policy does not apply to activities that are carried out under Superfund and RCRA Corrective Action enforcement instruments.
- This policy does not apply to imports.

For potential civil violations, the enforcement discretion set forth in this temporary policy is subject to the following conditions (as quoted in the memorandum).

1. Entities should make every effort to comply with their environmental compliance obligations.

2. If compliance is not reasonably practicable, facilities with environmental compliance obligations should:

- a. Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19;
- b. Identify the specific nature and dates of the noncompliance;
- c. Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;
- d. Return to compliance as soon as possible; and
- e. Document the information, action, or condition specified in a. through d.\

In the policy memorandum, EPA states that it expects all regulated entities to continue to manage and operate their facilities in a manner that is safe and that protects the public and the environment. Facilities are instructed to contact the appropriate regulatory authorities 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 you have any questions or would like additional information, please contact us.

Best regards,

Jeff

## **EPA Announces Enforcement Discretion Policy for COVID-19 Pandemic**

**WASHINGTON (March 26, 2020)** — The U.S. Environmental Protection Agency (EPA) is 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-governmental Organizations during the COVID-19 pandemic. The agency is taking these important considerations into account as we all continue our work to protect human health and the environment. Accordingly, EPA is announcing a temporary policy regarding EPA enforcement of environmental legal obligations during the COVID-19 pandemic.

EPA's temporary enforcement discretion policy applies to civil violations during the COVID-19 outbreak. The policy addresses different categories of noncompliance differently. For example, under the policy EPA does not expect to seek penalties for noncompliance with routine monitoring and reporting obligations that are the result of the COVID-19 pandemic but does expect operators of public water systems to continue to ensure the safety of our drinking water supplies. The policy also describes the steps that regulated facilities should take to qualify for enforcement discretion.

"EPA is committed to protecting human health and the environment, but recognizes challenges resulting from efforts to protect workers and the public from COVID-19 may directly impact the ability of regulated facilities to meet all federal regulatory requirements," **said EPA Administrator Andrew Wheeler**. "This temporary policy is designed to provide enforcement discretion under the current, extraordinary conditions, while ensuring facility operations continue to protect human health and the environment."

The temporary policy makes it clear that EPA expects regulated facilities to comply with regulatory requirements, where reasonably practicable, and to return to compliance as quickly as possible. To be eligible for enforcement discretion, the policy also requires facilities to document decisions made to prevent or mitigate noncompliance and demonstrate how the noncompliance was caused by the COVID-19 pandemic. This policy does not provide leniency for intentional criminal violations of law. The policy does not apply to activities that are carried out under Superfund and RCRA Corrective Action enforcement instruments. EPA will address these matters in separate communications.

EPA's policy will apply retroactively beginning on March 13, 2020. EPA will assess the continued need for and scope of this temporary policy on a regular basis and will update it if EPA determines modifications are necessary. In order to provide fair and sufficient notice to the public, EPA will post a notification [here](#) at least 7 days prior to terminating this temporary policy.

To read the EPA Policy on Enforcement during the COVID-19 outbreak: <https://www.epa.gov/enforcement/enforcement-policy-guidance-publications>. Members of the public can help protect our environment by identifying and reporting environmental violations. Learn more here: <https://www.epa.gov/enforcement/report-environmental-violation-general-information>.