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US EPA issues temporary enforcement policy in wake of COVID-19

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On March 26, 2020, US EPA issued a [memorandum](#) announcing a temporary policy to address noncompliance with environmental legal obligations resulting from the COVID-19 pandemic, in lieu of otherwise applicable EPA enforcement response policies. The temporary policy applies retroactively beginning March 13, 2020, and applies to actions or omissions that occur while the policy is in effect, even after the policy terminates. US EPA states that it will notify the public at least seven days prior to terminating the policy.

US EPA makes clear that regulated entities are still expected to make every effort to comply with all environmental compliance obligations. However, the policy generally states that the agency will exercise enforcement discretion for instances of noncompliance caused by COVID-19 and then sets forth how that discretion will differ depending on the type of noncompliance. The policy sets forth how US EPA intends to use its enforcement discretion for various types of anticipated civil violations that may be caused by the COVID-19 pandemic, including:

- routine compliance monitoring and reporting by regulated entities
- settlement agreement and consent decree reporting obligations and milestones, including administrative settlement agreements and consent

decrees entered into with EPA and the DOJ

- facility operations

US EPA further discusses specific expectations for public water systems regulated under the Safe Drinking Water Act and for facilities that are essential critical infrastructure.

The policy includes several carve-outs. US EPA notes that the policy specifically does not apply to any criminal violations or conditions of probation in criminal sentences, activities that are carried out under Superfund and RCRA Corrective Action enforcement instruments, or to imports. The agency also notes that the policy does not alter any provision of any statute or regulation that contains legally binding requirements, that is not itself a regulation, and that states may take different approaches.

Entities that anticipate potential disruptions to operations as a result of COVID-19 should closely document their specific causes of noncompliance, and all efforts taken to return to compliance, and should closely evaluate US EPA's policy for specific reporting requirements applicable to their operations.