

Insights: Alerts

U.S. EPA Issues Temporary Enforcement Policy to Address COVID-19 Pandemic Impacts

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Written by **Susan H. Richardson**

Please note: The below information may require updating, including additional clarification, as the COVID-19 pandemic continues to develop. Please monitor our main [COVID-19 Task Force page](#) and/or your email for updates.

The United States Environmental Protection Agency (EPA) recognizes that work shortages, stay-in-place orders, travel restrictions, social distancing recommendations caused by the COVID-19 pandemic will have an impact on compliance with federal environmental regulations. In response, on March 26, 2020, EPA issued a temporary policy outlining how the Agency “intends to exercise its enforcement discretion with respect to certain compliance situations.” The temporary policy, retroactive to March 13, 2020, will apply until EPA terminates it.

As an initial matter, it is important to note what the new policy does not address. Criminal actions, CERCLA or RCRA Corrective Actions, importations of chemicals and emergency release reporting requirements are not subject to the temporary policy and these actions and regulations will continue in effect. The policy does address how EPA intends to exercise its enforcement discretion for different types of violations that may occur during the pandemic:

- Routine Monitoring and Sampling Requirements
 - U.S. EPA does not intend to seek civil penalties for violations of requirements related to routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, reporting or certification where the reason for noncompliance was caused by the COVID-19 pandemic.
 - Regulated entities should use existing procedures to report noncompliance. But, if that is not possible or reasonably practicable, regulated entities should maintain internal records regarding the noncompliance.
 - Full compliance is expected promptly once the temporary policy is terminated. However, EPA does not expect regulated entities to play “catch up” for missed monitoring or reporting requirements if the compliance interval is less than three months.
 - EPA also agrees to accept electronic and digital signatures in lieu of “wet” signature requirements.

- Consent Decree and Settlement Agreements
 - U.S. EPA generally will not seek stipulated penalties for routine monitoring, testing, sampling,

laboratory analysis, training and associated certification and reporting requirements if the cause was related to COVID-19 pandemic.

- Regulated entities should comply with the notice provisions, including force majeure provisions, of the administrative settlement or federal consent decree to notify EPA of such noncompliance.
- Facility Operations
 - EPA will consider the impacts of the COVID-19 pandemic in determining whether an enforcement response is appropriate when a facility experiences a failure or air emission controls or wastewater or waste treatment systems or equipment.
 - In such event, the facility must notify the permitting authority as quickly as possible. The notice must document the exceedance or release, including the pollutants emitted or discharge, discarded or released as well as the time and expected duration of the release.
 - A hazardous waste generator will not lose its current status even if storage durations or volumes are exceeded if the COVID-19 impacts the ability for the generator to arrange for offsite shipping of the hazardous waste.
 - Although the scope of this policy may appear to be broad, it is a measured response to truly unique and novel emergency circumstances created by the COVID-19 pandemic. The regulated entities should act responsibly under the circumstances to minimize the effects and duration of any noncompliance and document the cause of the noncompliance, efforts to comply and steps taken in response to the noncompliance. It remains incumbent on all regulated entities to strive for compliance with all requirements and to document any and all instances of noncompliance as well as notify EPA of such noncompliance as quickly as possible.

The policy may be found at <https://www.epa.gov/enforcement/covid-19-implications-epas-enforcement-and-compliance-assurance-program>.

Related People



Susan H. Richardson

Counsel
Atlanta, GA
t 404.815.6330
srichardson@kilpatricktownsend.com