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ALERT  
APRIL 2020

A composite image featuring a sign for the United States Environmental Protection Agency (EPA) in the foreground. The sign is blue with white text. In the background, there are industrial smokestacks emitting white smoke, and several pink, spherical coronavirus particles are scattered throughout the scene, suggesting a connection between environmental issues and the COVID-19 pandemic.

UNITED STATES  
ENVIRONMENTAL  
PROTECTION AGENCY

## EPA Issues COVID-19 Enforcement Discretion Policy

***The Environmental Protection Agency ("EPA") announced that it will not penalize certain environmental violations that are the result of the coronavirus pandemic.***

On March 26, 2020, the EPA adopted [a policy](#) stating that the agency does not expect to seek penalties for noncompliance with environmental laws due to failure to complete routine monitoring and reporting obligations as a result of the COVID-19 pandemic. The policy is an outgrowth of concerns about the availability of workers and contractors and a desire to promote social distancing measures to prevent the spread of the novel coronavirus. The EPA's policy will apply retroactively to events beginning on March 13, 2020.

Although the EPA expects facilities to comply with regulatory requirements, the enforcement discretion policy recognizes that the challenges resulting from efforts to protect workers and the public from COVID-19 may directly impact their ability to meet federal environmental requirements. The EPA expects that facilities may have difficulty with sampling, analysis, and reporting obligations and with meeting "enforceable limitations on air emissions and water discharges." Compliance with drinking water standards is among the highest EPA priorities at this time, and the enforcement discretion does not cover those issues.

To qualify for enforcement discretion, the policy requires facilities to be able to demonstrate how noncompliance was caused by the COVID-19 pandemic. The policy includes an expectation that facilities will return to compliance as quickly as possible and document: (i) the nature and dates of the noncompliance; (ii) how COVID-19 was the cause of the noncompliance; and (iii) efforts made to return promptly to compliance.

"EPA does not expect to seek penalties for violations of routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification obligations in situations where the EPA agrees that COVID-19 was the cause of the noncompliance and the entity provides supporting documentation to the EPA upon request." Depending on the circumstances, makeup reporting may be necessary once the enforcement discretion ends.

Substantive violations of emission limitations or water discharge limits require notification to the implementing agency. That agency will take steps to determine if the excess emissions create an acute risk or imminent danger to public health that requires more than ordinary mitigation efforts. The EPA also will allow facilities to exceed various accumulation time and volume standards for regulating hazardous waste generators and animal feeding operations without triggering more stringent requirements as long as the exceedance is caused by the pandemic.

The policy is not applicable to registration requirements for disinfection products for the novel coronavirus. It 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. The EPA will address these Superfund and RCRA matters in separate communications.

A coalition of 15 environmental justice, public health, and public interest organizations led by Natural Resources Defense Council petitioned the EPA to issue an emergency rule to require businesses that use the enforcement discretion to provide written notice and justification to the EPA which would be made available to the public. On April 16, 2020, those same groups filed a [complaint](#) seeking to force the EPA to act on the petition.

EPA enforcement discretion does not apply to states enforcing their own environmental standards. Many states, though, have adopted their own policies that either adopt the EPA policy or have similar elements. For example, [Texas](#) announced it will not enforce for late reporting under a number of environmental standards if late reports are filed by April 30, 2020. [California](#) notes that environmental compliance is essential but offers case-by-case relief following notification by electronic mail. [Illinois](#) expects regulated businesses to take every possible step to assure ongoing compliance but offers the possibility of enforcement discretion for situations that do not threaten human health or the environment and that are directly related to the pandemic.



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