

Coronavirus(COVID-19): U.S. Environmental Protection Agency Issues Temporary Policy regarding Enforcement Discretion/Compliance Assurance

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On March 26, 2020, the United States Environmental Protection Agency (“EPA”) issued a Memorandum addressing “COVID-19 Implications for EPA’s Enforcement Assurance Program.”

EPA’s Susan Parker Bodine, the Assistant Administrator for Enforcement and Compliance Assurance, transmitted the Memorandum to all agency “Governmental and Private Sector Partners.”

The Memorandum acknowledges the widespread impacts the COVID-19 pandemic is having on the regulated community. Further, it outlines measures meant to provide regulatory relief to affected facilities while maintaining environmental protection.

Note that the policy is temporary. Further, it is only effective during the defined period of the COVID-19 pandemic. It is also retroactive. In other words, it will be applied to incidents first occurring on March 13, 2020.

The Memorandum notes that as the EPA continues to evaluate measures that may be applied in providing assistance to regulated facilities, additional guidance may be produced. Until then, this Memorandum is meant to provide guidance and assurance to affected facilities and the EPA’s state partners.

Of particular importance to the regulated community, EPA states that:

The consequences of the pandemic may affect facility operations and the availability of key staff and contractors and the ability of laboratories to timely analyze samples and provide results. As a result, there may be constraints on the ability of a facility or laboratory to carry out certain activities required by our federal environmental permits, regulations, and statutes. These consequences may affect reporting obligations and milestones set forth in settlements and consent decrees. Finally, these consequences may affect the ability of an operation to meet enforceable limitations on air emissions and water discharges, requirements for the management of hazardous waste, or requirements to ensure and provide safe drinking water.

The guidance provided in the Memorandum is grouped into the following topics pertinent to enforcement discretion:

- Civil violations

- General conditions
- Routine compliance monitoring and reporting by regulated entities
- Settlement agreement and consent decree reporting obligations and milestones
- Facility operations
- Public water systems regulated by the Safe Drinking Water Act
- Critical infrastructure

The guidance does not apply to activities carried out under Superfund and Resource Conservation and Recovery Act Corrective Action enforcement instruments. According to EPA, those matters will be addressed in a separate document.

Additionally, the EPA distinguishes the importance of the nation's critical infrastructure. In the instance such a facility requires compliance accommodations during this time, EPA indicates it will work to tailor such requests with a special No Action Assurance.

While providing procedures to report COVID-19 compliance issues, the EPA makes clear that it expects all regulated entities to continue to manage their facilities in a manner that is safe and that protects the public and the environment. The EPA also encourages affected entities to make every effort to comply with their environmental compliance obligations.

In instances where a state environmental agency is delegated or approved to implement a federal program, the EPA encourages affected facilities to engage both the state and the EPA on reporting and addressing environmental issues.

In Arkansas, the Division of Environmental Quality ("DEQ") administers state environmental programs. DEQ is currently reviewing requests for regulatory relief in response to the COVID-19 pandemic. It is expected that DEQ will issue regulatory guidance in the coming days.

A copy to the EPA Memorandum can be found [here](#).