

## EPA's COVID-19 Enforcement Policy

The US Environmental Protection Agency has announced its temporary policy regarding environmental enforcement activities during the COVID-19 pandemic. It can be found at <https://www.epa.gov/enforcement/covid-19-implications-epas-enforcement-and-compliance-assurance-program>. The policy is retroactive to March 13, 2020, and will apply for the foreseeable future, until 7 days after EPA gives notice that the policy will terminate.

The policy applies to actions for which EPA has federal enforcement authority. There are many state programs, and federal programs that are delegated to and operated by the states, that will be governed by state decisions on enforcement priorities. **While states are expected to follow EPA's lead in determining program priorities, state environmental agencies should be consulted before taking any action to change the terms of an existing permit, order or other environmental obligation.**

The following are some highlights of the policy:

Environmental compliance is still expected, to the degree possible. Where some aspect of compliance is impractical, a facility is to:

1. Minimize the effect and duration of the noncompliance.
2. Identify the specific nature and type of noncompliance.
3. Explain how COVID-19 caused the noncompliance, what was done to comply, and what was done to come into compliance as soon as possible.
4. Return to compliance as soon as possible.
5. Document all the foregoing actions, information and decisions.

Examples of activities to which the policy applies include routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification. Relief will be provided assuming EPA agrees that COVID-19 is the reason for the noncompliance, and the reasons are documented. Where there is a justifiable change in compliance, as a general rule, EPA will not ask facilities to "catch up" on missed monitoring or reporting obligations with a recurrence intervals of 3 months or less. For longer intervals, reasonable measures to comply late, or to justify the noncompliance, may be required.

Special considerations apply to EPA administrative consent orders, which by their terms may provide special reporting or compliance activities, and to consent decrees with EPA and the Department of Justice, which are formal agreements and court orders.

Continued safe operation of facilities is expected. The implementing agency should be contacted if there is an acute risk or imminent endangerment of health as a result of noncompliance caused by COVID-19. EPA will work with the state and other entities to assess the situation and determine a response. Similar notification should be provided to EPA or the state implementing agency if there will be a failure of air pollution controls, wastewater treatment systems, or other facility equipment that could result in permit exceedances or other unlawful discharges or releases.

Hazardous waste generators who are unable to move hazardous waste offsite due to the pandemic will be allowed additional accumulation time without converting to storage facilities.

Recognizing the importance of public water supplies, EPA will give greater scrutiny to operators of such systems, and their obligations to provide the public safe potable water. In particular, public water systems and laboratories are expected to protect against microbial contamination.

The policy does not apply in all situations. Separate policies will be developed for the following activities, and others as they are identified:

- \* Criminal actions with a criminal *mens rea*
- \* Superfund sites and RCRA Corrective Actions
- \* Imports, particularly imported pesticides
- \* Prevention of accidental releases

This is only intended as a summary of key aspects of the EPA enforcement policy. For additional information and greater detail, please consult the policy document at the link provided above.