

PUBLICATION

Coronavirus: Implications for EPA's Enforcement and Compliance Assurance Program

March 27, 2020

On March 26, 2020, the U.S. Environmental Protection Agency (EPA) issued a Memorandum entitled "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program," in response to the COVID-19 pandemic. In an unprecedented action, the EPA essentially suspended all environmental enforcement action with certain limited exceptions. The policy is retroactive for any applicable noncompliance as of March 13, 2020. Regular updates will be posted on the EPA website.

The EPA Memorandum specifies that this temporary policy does not apply to criminal violations or conditions of probation in criminal sentences. This policy also does not apply to activities that are carried out under Superfund and RCRA Corrective Action. Such matters will be addressed in a separate EPA communication. This policy does not apply to imports. The EPA is particularly concerned about pesticides coming into or manufactured in the United States which claim to address COVID-19. More information on pesticides regulation can be found on the [EPA website](#).

As a condition of compliance with the policy, facilities should still make every effort to comply with their environmental compliance obligations. The EPA Memorandum also provides that if compliance is not possible, facilities should take specified measures, including identification of the particular activities for which compliance is not possible. The EPA Memorandum also provides that where feasible, facilities should continue to report incidents under permits and applicable regulations; however, where this is not feasible, facilities should keep a record of such reporting. The EPA will not expect facilities to "catch up" with lapses in reporting violations where the policy is followed by the facility. The EPA does expect online training to continue where applicable.

In addition, the EPA Memorandum provides that deliverables under settlement agreements and consent decree reporting obligations and milestones can be delayed under certain circumstances as set forth in the policy. The EPA expects all regulated entities to continue to manage and operate their facilities in a manner that is safe and that protects the public and the environment. The EPA remains concerned about unauthorized air emissions and wastewater or waste treatment system discharges which should continue to be monitored, and violations should be addressed and reported as quickly as possible. The EPA also will allow temporary storage of hazardous wastes on-site even beyond usual time tables if properly labeled and stored in a safe manner. In addition, the EPA provides relief for animal feeding operations which are unable to comply with applicable regulations.

The EPA still expects public water systems to fully comply with its obligations to ensure a safe supply of water. These requirements in particular include maintenance, sampling, and monitoring of water supplies. Water quality laboratories are also expected to remain in compliance. The EPA also encourages critical infrastructure to be maintained and will work with facilities to ensure compliance. The EPA expects to focus its resources largely on situations that may create an acute risk or imminent threat to public health or the environment, to ensure protection against such risks or threats. Facilities must still respond appropriately to accidental releases.

For further information on this alert, contact any member of [Baker Donelson's Environmental Group](#). For information and resources on the COVID-19 pandemic, visit it our [Coronavirus \(COVID-19\): What You Need to Know webpage](#).