

# Do we need to comply with EPA regulations during COVID-19?

March 30, 2020

## EPA issues enforcement discretion policy during COVID-19 crisis

On March 26, 2020, the U.S. Environmental Protection Agency (EPA) issued [guidance on how it will exercise its enforcement discretion in light of the COVID-19 pandemic](#). Many states have implemented similar guidance on exercising prosecution discretion during the crisis. It is important for companies to familiarize themselves with the state enforcement discretion policies as well as the EPA policy for nuances unique to that particular state. The EPA policy is retroactive to March 13, 2020.

The temporary policy makes it clear that the EPA expects regulated facilities to comply with regulatory requirements, where reasonably practicable, and to return to compliance as quickly as possible. The EPA policy does not apply to CERCLA or RCRA Corrective Action sites; emergency reporting of accidental releases; imports; state or tribal matters; or criminal actions.

To be eligible for enforcement discretion, the policy also requires facilities to document decisions made to prevent or mitigate noncompliance and demonstrate how the noncompliance was caused by the COVID-19 pandemic. The guidance covers:

1. monitoring and reporting,
2. settlement and consent decree obligations,
3. facility operations,
4. public water systems, and
5. critical infrastructure.

Where compliance is not “reasonably practicable,” facilities are advised to document and do the following:

1. Act responsibly under the circumstances to minimize the effects and duration of any COVID-19-related noncompliance;
2. Identify the specific nature and date of the noncompliance;

3. Identify how COVID-19 was the cause of the noncompliance and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;
4. Return to compliance as soon as possible; and,
5. Document the information, action, or condition specified above.

The EPA will assess the need for this temporary policy and will update it if EPA determines modifications are necessary.

Companies must plan carefully for the type of documentation that may be needed to demonstrate the reasonableness of compliance efforts and the need for any non-compliance. This documentation may be needed months or years from now when the federal or state lead agency ultimately makes case-specific decisions determining a company's eligibility to avail themselves of the EPA's Enforcement Discretion Guidance Policy.

McGlinchey's Environmental team is here to help businesses properly document and preserve their rights under EPA's Enforcement Discretion Guidance Policy. Please contact us with any questions on the above topics or your environment and energy questions in general. We look forward to helping.

Visit our [COVID-19 Resource Center](#).

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