



## U.S. EPA's COVID-19 Enforcement Discretion Policy Is In Effect

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As the country reacts to the evolving COVID-19 pandemic, even the best-managed facilities have asked about the potential exercise of enforcement discretion by Federal, State, and Tribal regulators for environmental violations that may be unavoidable as a result of COVID-19.

U.S. EPA just issued its enforcement policy for violations attributable to COVID-19 complications. The document, titled "[Memorandum on COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program](#)," was issued on March 26 – but is retroactively effective from March 13, 2020, until U.S. EPA announces its termination. The agency will provide public notice on the [Enforcement Policy, Guidance & Publications](#) page of its website at least seven days before the termination.

The policy applies to noncompliance that occurs while the policy is in effect – meaning that, even after the policy's termination, U.S. EPA will apply the enforcement discretion described by the policy to these instances of noncompliance instead of an otherwise-applicable U.S. EPA enforcement response policy. For noncompliance with routine compliance monitoring and reporting obligations, this means the difference between a facility's liability for penalties and the policy's enforcement discretion "in general" to not expect penalties for this kind of COVID-19-related noncompliance.

### Compliance Obligations Are Unchanged

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Importantly, the policy does not change any compliance obligations. To receive potential benefits from the policy where COVID-19 renders compliance not reasonably practical, entities are required to:

- Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19
- Identify the specific nature and dates of the noncompliance
- 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
- Return to compliance as soon as possible
- Document the information, action, or condition specified for each item in this list

The U.S. EPA policy recognizes that “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” and explains the agency’s approach to exercising enforcement discretion – from waiving civil or stipulated penalties to determining whether an enforcement response is appropriate – for the following kinds of civil violations:

- Routine compliance monitoring and reporting by regulated entities, across multiple statutes
- Administrative settlement agreement and consent decree reporting obligations and milestones
- Facility operations, including:
  - failures of air emission controls, wastewater or waste treatment systems, or other facility equipment
  - violations related to accumulations of waste that might force a hazardous waste generator into becoming a treatment, storage, and disposal facility or change the status of Very Small Quantity Generators or Small Quantity Generators
  - increases in animal populations affecting definitions of animal feeding operations

The policy also explains its “heightened expectations” for compliance by Public Water Systems regulated under the Safe Drinking Water Act, going so far as to identify priority tiers of compliance monitoring for these systems and indicating that the agency will not defer enforcement for these facilities.

The policy avoids offering any “No Action Assurances” for instances of noncompliance, leaving the possibility for such short-term assurances only for facilities that employ essential [critical infrastructure](#) workers and only if Assistant Administrator of the Office of Enforcement and Compliance Assistance Susan Bodine makes such a determination on a case-by-case basis.

Important limitations on the policy’s scope include:

- The policy does not govern authorized State or Tribal enforcement decisions.
- The policy does not alter consent decrees or court orders.
- The policy does not apply to activities carried out under Superfund or RCRA Corrective Action instruments. A separate policy will address these matters.
- The policy does not apply to imports or to criminal violations.
- The policy does not indicate a willingness to exercise enforcement discretion in the event of accidental releases. The policy does not relieve any entity from its responsibility to prevent, respond to, or report accidental releases of oil, hazardous substances, hazardous chemicals, hazardous waste, and other pollutants.