



## Environment, Land Use & Natural Resources ADVISORY ■

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### EPA Modifies Guidance for Compliance During the COVID-19 Pandemic

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The Environmental Protection Agency (EPA) has again modified its guidance for facilities struggling with maintaining compliance due to the COVID-19 pandemic, meaning how companies document their noncompliance remains critical.

The EPA has provided a [termination date for its temporary policy](#) on noncompliance with reporting requirements during the COVID-19 pandemic. Following August 31, 2020, the EPA will no longer use the temporary policy as a basis for exercising enforcement discretion of noncompliance.

[The EPA's temporary policy was issued on March 26, 2020](#), when many states implemented pandemic-related restrictions on business operations, travel, and social interactions. The policy addressed how companies that could not meet their reporting or monitoring obligations due to the pandemic should document the reasons for the noncompliance. The policy also explained that the EPA may exercise enforcement discretion for that noncompliance provided that it is clearly documented as being due to the pandemic. The EPA followed that broad policy with additional guidance specific to different environmental laws.

The EPA's announcement comes as some states have eased pandemic-related restrictions on business operations. The memorandum notes these eased restrictions but also recognizes that adjustments to certain environmental requirements may be required for a company to satisfy both environmental legal obligations and COVID-19-related guidance from public health officials.

Even with the termination of the temporary policy, the EPA retains the ability to exercise enforcement discretion case by case. This includes the potential for exercising enforcement discretion when a company can document that its noncompliance is attributable to a reasonable attempt to comply with COVID-19 guidance issued by the Centers for Disease Control and Prevention or another agency.

Companies with facilities struggling with routine monitoring and reporting compliance should contact counsel, the EPA, or their appropriate state agency to discuss the conditions of their compliance. Facilities should also remain aware of how their state is implementing any changes related to the COVID-19 pandemic.

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The memorandum rescinding the temporary policy also provides that the EPA may terminate the temporary policy for a single state or nationally before August 31, 2020 based on changing conditions by providing seven days' notice. Alston & Bird is continuing to monitor for developments to EPA and state program requirements, including compliance reporting obligations.

Alston & Bird has formed a multidisciplinary [response and relief team](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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