

KIRKLAND & ELLIS

Blog Post

EPA's COVID-19 Enforcement Discretion Policy Will Terminate on August 31, 2020

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On June 29, 2020, the U.S. Environmental Protection Agency ("EPA") announced that its temporary policy regarding enforcement of environmental legal obligations during the COVID-19 pandemic (the "Enforcement Policy") will terminate on August 31, 2020. Many companies in the energy and infrastructure space may be impacted by the termination of the Enforcement Policy. Any businesses that have taken advantage of EPA's enforcement discretion under the Enforcement Policy should be prepared to resume compliance activities in the ordinary course when the Enforcement Policy terminates.

The Enforcement Policy

On March 26, 2020, EPA issued the [Enforcement Policy](#), pursuant to which EPA indicated that it would not expect to seek penalties for noncompliance with routine obligations (specifically, compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification) in situations where EPA agreed that COVID-19 caused the noncompliance and the business provided supporting documentation to EPA upon request. After the Enforcement Policy is no longer in effect, absent exigent circumstances, EPA does not plan to ask facilities to "catch-up" with missed monitoring or reporting if the underlying requirement applies to intervals of less than three months. For other monitoring or reports, such as those required on a bi-annual or annual basis, EPA expects facilities to take reasonable measures to resume compliance activities in the ordinary course as soon as possible after the Enforcement Policy is no longer in effect, including conducting late monitoring or submitting late reports.

Termination of Enforcement Policy on August 31, 2020

On June 29, 2020, EPA issued an [addendum](#) to the Enforcement Policy that terminates the Enforcement Policy in its entirety on August 31, 2020; EPA will not base any exercise of enforcement discretion on the Enforcement Policy for any noncompliance that occurs after August 31, 2020. In addition, EPA may terminate the Enforcement Policy on a national or local basis, in whole or in part, at any time before August 31, 2020, but will provide at least seven days' advance notification before doing so. In the addendum, EPA notes that nothing in the Enforcement Policy limits its ability to exercise enforcement discretion on a case-by-case basis regarding any noncompliance, including noncompliance caused by the COVID-19 public health emergency, before or after the Enforcement Policy terminates.

Businesses Should Prepare to Resume Compliance Activities

Businesses that have taken advantage of EPA's enforcement discretion under the Enforcement Policy for noncompliance caused by COVID-19 should prepare to resume compliance activities when the Enforcement Policy terminates, including:

- conducting late monitoring and submitting late reports where monitoring or reporting is required on a bi-annual or annual basis under environmental permits or environmental regulations;
- resuming any compliance monitoring, integrity testing, sampling, laboratory analysis, training, reporting or certification required in the ordinary course under environmental permits or regulations; and
- conducting any other actions in the ordinary course necessary to comply with environmental permits or regulations.

Businesses should also monitor EPA notifications that may terminate the Enforcement Policy, in whole or in part, at an earlier time and any state-specific regulatory compliance policies and updates that have been issued in response to COVID-19.

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