

PUBLICATION

EPA Plans to Terminate COVID-19 Enforcement Flexibility Policy

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The EPA announced on June 22, 2020, that "in the near future" it will terminate its policy from earlier this year granting industries discretion from meeting compliance obligations under environmental regulations as a result of COVID-19. On March 26, 2020, the EPA issued a policy directive that said it does not intend to enforce against violations where compliance is not possible as a result of COVID-19. The EPA indicated that, while entities should attempt to comply with compliance obligations, if it is not practical to do so as a result of COVID-19 they are only obligated to "act responsibly under the circumstances in order to minimize the effects and duration of any non-compliance caused by COVID-19," and "return to compliance as soon as possible." The response to EPA's loosening of enforcement led to extensive controversy, with several state attorneys general filing suit against the EPA and U.S. Senate Democrats expressing strong concerns. See [6/12/20 Inside EPA Weekly Report 24, 2020 WLNR 16324179](#). See also [6/19/20 Inside EPA Weekly Report 25, 2020 WLNR 17006044](#).

According to the EPA, its regional offices have received around 300 requests for compliance flexibility from industries. Environmentalists and state attorneys general as well as certain U.S. Senate Democrats have characterized the policy as an attempt or an excuse for industries to avoid compliance with environmental regulations. While it is not clear yet when the EPA will rescind its policy, and it will evaluate compliance on a case-by-case basis utilizing its enforcement discretion, it is anticipated that the policy will be rescinded in the near future. Interestingly, the EPA also indicated that several companies have invoked "force majeure" to avoid obligations under settlement agreements with the EPA. See [6/26/20 Inside EPA Weekly Report 26, 2020 WLNR 17695065](#).

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