

## COVID-19 EPA SCALES BACK ENFORCEMENT

On March 26, 2020, the U.S. Environmental Protection Agency (EPA) announced a temporary policy ([read here](#)) scaling back enforcement of environmental legal obligations during the COVID-19 pandemic. This policy does not control the States but seems consistent with Governor Whitmer's Michigan Stay-at-Home Executive Order.

The Order is intended to both protect EPA staff and to respond to possible staff shortages as a result of COVID-19. This policy does not provide leniency for intentional criminal violations of law.

EPA's temporary enforcement discretion policy applies to civil violations during the COVID-19 outbreak. The policy addresses different categories of noncompliance differently. For example, under the policy, the EPA does not expect to seek penalties for noncompliance with routine monitoring and reporting obligations that are the result of the COVID-19 pandemic but *does* expect operators of public water systems to continue to ensure the safety of our drinking water supplies. The policy also describes steps that regulated facilities should take to qualify for enforcement discretion.

The EPA makes it clear that they expect regulated facilities to comply with regulatory requirements, where reasonably practicable, and to return to compliance as quickly as possible. To be eligible for enforcement discretion, the policy requires facilities to document decisions made to prevent or mitigate noncompliance and demonstrate how the noncompliance was caused by the COVID-19 pandemic.

The policy does not apply to activities that are carried out under Superfund and RCRA Corrective Action enforcement instruments. The EPA will address these issues separately.

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