

EPA Announces Plan to Terminate COVID-19 Enforcement Discretion Policy on August 31, 2020

by Hannah D. Vanderlaan

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The United States Environmental Protection Agency (“EPA”) recently [announced](#) that it will be terminating its temporary enforcement discretion policy on August 31, 2020 at 11:59 PM Eastern Daylight Saving Time. In general, this means that EPA will not base any exercise of enforcement discretion on this temporary enforcement discretion policy for any noncompliance that occurs after August 31, 2020.



EPA issued its [temporary enforcement discretion policy](#) on March 26, 2020 stating its intent not to bring enforcement actions for a range of violations of environmental regulations caused by COVID-19. Until August 31, 2020, EPA’s policy is that it will continue exercising this discretion and will “consider the circumstances, including the COVID-19 pandemic, when determining whether an enforcement response is appropriate.”

In selecting the termination date, EPA took into consideration the new federal guidelines and directives that have been issued to support the public health response and economic recovery efforts, as well as the lifting of state and local restrictions. EPA expects that the restrictions impacting regulatory compliance will likewise be lifted and will reduce the circumstances in which the temporary enforcement discretion policy may apply.

EPA recognizes, however, that in certain circumstances, it may need to continue exercising enforcement discretion even beyond August 31. The Termination Addendum provides that “[n]othing herein limits the ability of the EPA 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 temporary policy is terminated.”

Notwithstanding, regulated entities that have taken advantage of EPA’s temporary enforcement discretion policy should prepare to resume compliance activities by August 31, 2020. Additionally, regulated entities should continue to monitor EPA guidance and any state-specific enforcement discretion policies that have also been issued in response to COVID-19.

If you have any questions about EPA’s temporary enforcement discretion policy or how COVID-19 is affecting enforcement actions, please contact Hannah Vanderlaan at hvanderlaan@freeborn.com or 312-360-6487 or another member of Freeborn’s Environment & Energy Practice Group.

ABOUT THE AUTHOR



Hannah D. Vanderlaan

Attorney

Chicago Office
(312) 360-6487

hvanderlaan@freeborn.com

Hannah's practice focuses primarily on environmental-based litigation and regulatory counseling. Prior to joining Freeborn as an attorney, Hannah was a Law Clerk at the firm in the Environment and Energy Law practice group. In addition to working at Freeborn, while in law school, Hannah served a Legal Extern at the U.S. Environmental Protection Agency and The Office of Illinois Attorney General, Environmental Bureau.

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(217) 535-1069 fax

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Suite 950
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(804) 644-1300
(804) 644-1354 fax

TAMPA

1 Tampa City Center
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Tampa, FL 33602
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