

## **EPA ISSUES BROAD ENFORCEMENT GUIDANCE DURING PANDEMIC**

EPA issued a [memorandum](#) on March 26th titled: “COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program.” The memo establishes a temporary policy of enforcement discretion for non-compliance resulting from the COVID-19 pandemic. The policy applies retroactively to March 13, 2020. It requires entities to make every effort to comply with their environmental obligations. But if compliance is not reasonably practicable, facilities with environmental compliance obligations should:

1. Act responsibly under the circumstances in order to minimize the effects and duration of any noncompliance caused by COVID-19;
2. Identify the specific nature and dates of the noncompliance;
3. Identify how COVID-19 was the cause of the noncompliance, and the decisions and actions taken in response, including best efforts to comply and steps taken to come into compliance at the earliest opportunity;
4. Return to compliance as soon as possible; and
5. Document the information, action, or condition specified in 1. through 4.

There is no presumption that noncompliance is due to COVID-19; the burden is on the facility to demonstrate and document such issues. The guidance also includes special provisions for routine compliance monitoring and reporting by regulated entities; settlement agreements and consent decree reporting obligations and milestones; and facility operations.

EPA expects to focus its resources largely on situations that may create an acute risk or imminent threat to public health or the environment, to ensure protection against such risks or threats. Facilities should contact the appropriate regulatory authority (EPA region, authorized State, or tribe) if facility operations impacted by the COVID-19 pandemic may create an acute risk or an imminent threat to human health or the environment. Likewise, if a facility suffers from failure of air emission control or wastewater or waste treatment systems or other facility equipment that may result in exceedances of enforceable limitations on emissions to air or discharges to water, or land disposal or other unauthorized releases, the facility should notify the regulatory authority as quickly as possible.

The policy does not apply to any criminal violations or conditions of probation in criminal sentences. EPA may still pursue criminal violations against violations that are the result of an intentional disregard for the law. The policy does not apply to Superfund and RCRA Corrective Action enforcement instruments. It also does not apply to imports.

This is a lengthy and comprehensive seven-page policy document. NLA members should carefully review the entire policy document and consult your corporate attorney and/or outside counsel before relying on it in a particular situation. Additional EPA guidance during the COVID-19 pandemic on various issues is available [here](#).

For further information, please contact [Bradford Frisby](#).