

EPA Issues Temporary Guidance on Enforcement of Environmental Laws

March 30, 2020

On March 26, 2020, the United States Environmental Protection Agency (EPA) issued a guidance memorandum entitled “[COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program](#).” This memo includes a temporary policy that provides relief for businesses that have monitoring and reporting requirements under permits or other enforceable obligations related to certain air, water and hazardous-waste.

While the EPA emphasizes that all regulated entities should continue to manage and operate their facilities in a manner that is safe and protective of the public and the environment, it recognizes that many facilities are facing worker shortages and other restrictions on the ability to carry out required activities under federal environmental permits, regulations, and statutes. This temporary policy allows EPA substantial discretion in determining whether regulated entities that can provide proof of COVID-19 related business interruptions will face enforcement actions or penalties.

Entities should use existing procedures to report noncompliance with such routine activities including compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification. However, if a facility is unable to adhere to these reporting processes, noncompliance should be sufficiently internally documented. In addition to a facilities obligation to act responsibly, the guidance requires a facility to document the following:

- Identify the specific nature and dates of the noncompliance;
- 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; and
- Return to compliance as soon as possible.

The memo does make specific reference to public water systems and states that EPA expects a “heightened responsibility” from operators of those systems to continue normal operation and maintenance.

The memo further provides that this policy does not relieve any entity of their obligation to report an accidental release of oil or a hazardous substance. Nor does the policy apply to criminal violations. EPA will distinguish between unavoidable violations versus an intentional violation of the law.

This temporary policy will apply retroactively beginning on March 13, 2020. If you have any questions on whether this guidance pertains to your business, please contact Randi Schillinger or Geri Albin of Saiber LLC’s Environmental Law practice.