



## Notice Of Enforcement Discretion Termination Offers ‘Housekeeping’ Opportunity

July 7, 2020 | [Environmental, Enforcement](#)



**Richard E.  
Glaze Jr.**  
Partner

In a [June 29 memorandum](#), Susan Parker Bodine, assistant administrator for enforcement and compliance assurance at the EPA, announced that relief granted by [EPA's March 26 Enforcement Discretion Policy](#) will terminate on Aug. 31, 2020. As discussed in our previous blog post, EPA issued the policy to provide relief to regulated entities that might have difficulty complying with permitting and regulatory requirements because of the pandemic. It grants broad temporary relief to entities “for violations of routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification obligations in situations where the EPA agrees that COVID-19 was the cause of the noncompliance and the entity provides supporting documentation to the EPA upon request.”

Entities that have availed themselves of the policy and not fully complied with permit or other regulatory requirements should use the two months provided before the policy waivers end to ensure that they have complied with policy conditions and that they document their compliance. Entities should document compliance not only to help them meet the policy conditions for EPA, but also to establish protection from potential state and local inquiries into these practices.

The termination memorandum states that EPA “will not base any exercise of enforcement discretion on this temporary policy for any noncompliance that occurs after Aug. 31, 2020.” The memorandum also provides that EPA may

### RELATED PRACTICE AREAS

COVID-19 Resources  
Environmental  
Environmental Crimes and Investigations  
Remediation, Corrective Action and  
Voluntary Cleanups

### RELATED TOPICS

Environmental Protection Agency (EPA)  
Enforcement  
NPDES

terminate the policy “in whole or in part, at any earlier time, taking into account changing conditions in a state or region of the country, including as appropriate the expiration or lifting of ‘stay at home’ orders . . . and/or other relevant factors or considerations.” Consistent with the original policy, the memorandum promises to provide notification at least seven days prior to an earlier termination. Entities that believe they may fit into a category that may be subject to earlier termination should consider fast-tracking documentation of compliance.

To ensure compliance with the policy, entities should consider undertaking the following “housekeeping” tasks in anticipation of a return to business as usual:

- Identify reports required to have been submitted during the shutdown. Were they submitted and by what means (electronic versus hard-copy)?
- Provide agencies all required reports and data that have been deferred
- Evaluate agency enforcement discretion policies that may apply in addition to the EPA policy and be prepared to comply with any additional requirements they impose
- Review specifically applicable agency policies that may apply and comply with the requirements of the policies. See EPA’s “Temporary Advisory for National Pollutant Discharge Elimination System (NPDES) Reporting in Response to COVID-19 Pandemic”
- If required reports were submitted late or not submitted at all, document reasons why reports were delayed or not submitted and any actions taken to remedy such delays or omissions
- Communicate with state and local agencies as soon as possible with information required by their enforcement discretion policies  
These measures will not only prepare the entity for subsequent enforcement actions, but also help ensure a smoother return to pre-pandemic compliance, which will soon be required.

These measures will not only prepare the entity for subsequent enforcement actions, but also help ensure a smoother return to pre-pandemic compliance, which will soon be required.