



## Be Prepared For Imminent Termination Of EPA Enforcement Discretion Policy

August 31, 2020 | [Environmental, Enforcement](#)



**Richard E.  
Glaze Jr.**  
Partner

Entities regulated by EPA that have availed themselves of the relief granted by [EPA's March 26 Enforcement Discretion Policy](#) are reminded that the policy will expire August 31, as announced in the [June 29 memorandum](#) by Susan Parker Bodine, assistant administrator for enforcement and compliance assurance at the EPA.

As discussed in our previous blog post, EPA issued the policy to [provide relief to regulated entities](#) for compliance with permitting and regulatory requirements during the pandemic. It granted 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."

As the end of this relief period draws near, it is time for entities that have availed themselves of the policy and not fully complied with permit or other regulatory requirements to make sure they have taken steps to comply with the discretion policy's conditions and documentation requirements. As pointed out in earlier blog posts and a Barnes & Thornburg webinar on the [Impact of COVID-19 on Clean Water Act Compliance and Administration](#), completing documentation and other housekeeping tasks not only can help ensure compliance with the policy, but also can help establish protection from

### RELATED PRACTICE AREAS

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

### RELATED TOPICS

Environmental Protection Agency (EPA)  
Enforcement

potential state and local inquiries into these practices and provide a measure of protection from citizen suits.

To ensure compliance with the enforcement discretion policy, regulated entities should have undertaken by the expiration date the following “housekeeping” tasks, as applicable:

- 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
- Note that many states have followed EPA’s lead and may now be tightening enforcement approaches, but may still be willing to compromise on a case-by-case basis
- If an entity is still unable to comply, they should reach out to applicable state and federal contacts to explain the reason for non-compliance and be prepared to discuss the reasons for noncompliance and alternatives to full compliance. It will also be advisable to fully document the issue or issues

These measures will not only prepare the regulated entity for subsequent enforcement actions, but also help ensure a smoother return to pre-pandemic compliance. If compliance issues persist as agencies return to pre-COVID enforcement postures, entities should not hesitate to involve legal counsel.