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EPA'S Divisive "Temporary Enforcement Policy" Set to Terminate at End of August 2020

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On June 29, 2020, the U.S. Environmental Protection Agency (EPA) announced that its March 26, 2020 [Temporary Policy Memo](#), which modified the Agency's enforcement discretion in light of the sweeping impact of the COVID-19 pandemic in the United States (the "Temporary Enforcement Policy"), will terminate in its entirety at 11:59 PM Eastern Daylight Savings Time on Monday, August 31, 2020. Accordingly, EPA will not base its exercise of enforcement discretion on the Temporary Enforcement Policy as to any noncompliance by regulated entities occurring after August 31, 2020.

EPA's Temporary Enforcement Policy suspended enforcement activity and imposition of penalties for violations of routine compliance monitoring, testing, sampling, laboratory analysis, training, reporting and certification obligations, where a regulated entity could document that noncompliance was attributable to operational challenges arising from the COVID-19 pandemic. The Temporary Enforcement Policy quickly drew sharp criticism from Democratic lawmakers and coalitions of environmental conservation groups and states, and prompted [multiple lawsuits](#) against EPA. These still-pending legal challenges argue that EPA's Policy has allowed polluting industries to shirk their obligations under various environmental laws, compromising public health and further endangering already imperiled species.

In choosing August 31 as the termination date for the Temporary Enforcement Policy, EPA observed that as state and local restrictions imposed to combat the COVID-19 pandemic are gradually relaxed or lifted, operational challenges being faced by regulatory entities should begin to subside. EPA further noted that "as states and business begin to re-open, there will be a period of adjustment as regulated entities plan how to effectively comply both with environmental legal obligations and with public health guidance."

EPA's June 29 announcement additionally advised that, notwithstanding the August 31 termination date, EPA reserves the right to terminate its Temporary Enforcement Policy at any earlier time, on a regional or national basis and in whole or in part, upon seven days' advance notice to the public.

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