

COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program

March 30, 2020

On March 26, 2020, the U.S. Environmental Protection Agency ("EPA") published the guidance "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program" whereby EPA has modified the mandatory environmental compliance and reporting requirements for all regulated facilities, including, but not limited to, power plants, factories, and other associated energy facilities.

This guidance applies retroactively from March 13, 2020 to acts and omission occurring prior to termination of the guidance, and will continue until further notice. The policy does not apply to activities carried out under Superfund and RCRA Corrective Action enforcement instruments, criminal violations, or conditions of probation in criminal sentences.

Acknowledging that current mandatory reporting requirements may affect facility operations and the availability of key staff to carry out certain activities required by federal environmental permits, regulations, and statutes, EPA has stated that these modifications seek to ensure continued operations of regulated facilities including but not limited to the manufacturing and energy sector resulting from potential worker shortages, the consequences of which EPA believes could affect an operation's ability to meet enforceable limitations on air emissions and water discharges, requirements for the management of hazardous waste, or to ensure and provide safe drinking water.

In practice, the EPA will not seek penalties for violations of routine compliance monitoring, integrity testing, training, and reporting obligations where the EPA finds that COVID-19 was the cause of noncompliance, provided the entity produces supporting documentation to the EPA upon request. In addition, the EPA will not ask facilities to "catch-up" with missed monitoring or reporting if the underlying requirement applies to intervals of less than three months. Even so, regulated facilities are expected to provide timely notice of noncompliance events and to operate their facilities in a good faith manner that is safe and protective of human health and the environment.

The EPA recognizes that states and tribes may take different approaches under their own authorities, encourages states and tribes to consult with EPA, and will undertake measures to coordinate with other federal agencies in situations where the EPA shares jurisdiction over a regulated entity's environmental compliance obligations, with additional guidance to follow on an ongoing basis.

For more information or to discuss what this means to your business, please contact your Hall Estill Attorney.

Practices

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