

USEPA TO TERMINATE COVID-19 TEMPORARY ENFORCEMENT AND COMPLIANCE POLICY

Hodgson Russ Environmental Alert
July 1, 2020

As discussed in our March 27, 2020 alert, the United States Environmental Protection Agency (“USEPA”) issued a memorandum on March 26, 2020 entitled “COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program” (the “Policy”). Broadly speaking, the Policy is a temporary measure that relaxed USEPA’s enforcement of environmental legal obligations during the COVID-19 public health emergency due to the difficulties stemming from the pandemic that could potentially interfere with an entity’s ability to comply with monitoring, reporting, and remediation requirements. The Policy has been a source of controversy and led to a legal challenge filed by New York and eight other states, as well as a separate lawsuit filed by a coalition of environmental justice, public health, and public interest organizations.

Yesterday, USEPA issued a memorandum that in light of the progress in reopening the nation, and the attendant reduction in barriers to compliance, it has selected August 31, 2020 as the termination date for the Policy. Termination of the Policy means that the lenient discretionary enforcement guidance will not apply to non-compliance arising after that date, although USEPA reserves its right to exercise enforcement discretion on a case-by-case basis, including for non-compliance caused by pandemic-related hardships. And as stated in our March 27, 2020 alert, most major environmental statutes provide for delegated authority to States, so you should be mindful of the day-to-day oversight that your business or facility may be subject to depending on the State where it is located.

This termination memorandum may not, however, be the final word on the Policy. USEPA has also indicated that the Policy may be terminated “on a state or national basis, in whole or in part, at any earlier time, taking into account changing conditions in a state or region of the country.” If USEPA chooses to act under this provision, it will be required to provide at least seven days’ notice before termination takes effect.

Hodgson Russ will continue to monitor the situation and keep you informed of any additional changes to the Policy and its termination. If you have questions related to the Policy, or navigating any other environmental-related issue, please contact Michael Hecker (716.848.1599), Jeffrey Stravino (716.848.1394), or anyone else in the Hodgson Russ Environmental Practice, and we would be happy to help.

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Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

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