

# EPA Sets August 31st Termination Date for Temporary COVID-19 Enforcement Policy

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In late March of this year, the U.S. Environmental Protection Agency announced its [Temporary COVID-19 Enforcement Policy](#), summarized [here](#), which provided for more flexibility in enforcement during the pandemic. As some states begin to reopen, EPA has now issued an [addendum to the policy](#), setting the policy's termination for **August 31, 2020**. EPA said it reserves the right to terminate the policy or portions of it at an earlier time at select locations or nationally, in which case it will provide at least seven days' notice before doing so.

The Agency said it based its decision on new federal guidance and directives providing for the lifting of COVID-19 restrictions, which will continue to be relevant in limiting the circumstances under which the temporary policy may apply. Among such guidance and directives, EPA specifically cited guidance from the White House ("[Guidelines for Opening Up America Again](#)"), Centers for Disease Control and Prevention ("[Activities and Initiatives Supporting the COVID-19 Response and the President's Plan for Opening America Up Again](#)"), and an [Executive Order on Regulatory Relief to Support Economic Recovery](#). The Executive Order lays out a policy for Fairness in Administrative Enforcement and Adjudication, which calls for "prompt and fair" administrative enforcement, proportionate and transparent penalties, and enforcement "free of unfair surprise." See Executive Order at Section 6(b), (f), (i).

EPA faced backlash over the temporary policy, which excuses penalties in certain circumstances, including an entity's failure to comply with reporting, testing, recordkeeping, training, and emissions requirements, when the inability to comply is due to COVID-19. EPA also faces several lawsuits brought in response to the policy. One lawsuit, brought by nine states' Attorneys General, alleges that EPA did not have the authority to issue the "noneenforcement policy," it acted arbitrarily and capriciously when it did so, and the agency failed to follow the proper notice and comment procedure in issuing the policy. See [New York et al. v. EPA, No. 1:20-cv-03714](#), pending in U.S. District Court for the Southern District of New York. Environmental groups likewise followed suit, after first petitioning the agency to issue a final rule that would require regulated entities to notify the public when they take advantage of the temporary policy. See [Petition for Emergency Rulemaking](#), April 1, 2020. When the Agency did not issue such a rule, the groups also filed a lawsuit in the Southern District of New York. See [Natural Resources Defense Council, et al. v. EPA, No. 1:20-cv-3058](#).