

COVID-19/Addendum on Termination: U.S. Environmental Protection Agency Enforcement and Compliance Assurance Program



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

07/06/2020

The United States Environmental Protection Agency (“EPA”) issued a June 29th Memorandum titled: *COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program: Addendum on Termination (“Addendum”)*

The *Addendum* is transmitted from Susan Parker Bodine, EPA Assistant Manager for Enforcement and Compliance Assurance, to all Governmental and Private Sector Partners.

The *Addendum* addresses a March 26th Memorandum previously issued by EPA titled:

COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program (“Policy”)

A link to a description of the *Policy* can be found [here](#).

The March 26th *Policy* referenced the impacts the COVID-19 pandemic was having on the regulated community. Further, it outlined measures meant to provide regulatory relief to affected facilities while maintaining environmental protection.

EPA made clear in the *Policy* that it was temporary. It stated that the *Policy* would only be effective during the defined period of the COVID-19 pandemic.

The *Addendum* references events that have occurred since the *Policy*’s issuance, such as:

- Federal guidelines and directives supporting public health response and economic recoveries
- Parts of the country have taken steps to relax social distancing restrictions (with the goal of returning to normal operations)

In view of these developments, the *Addendum* states in part:

... it is now appropriate to expressly include a provision in the temporary policy that covers termination of the temporary policy, and to make such changes to the policy as are needed to reflect the impact of the changing circumstances on facility operations, worker shortages, and other constraints caused by the public health emergency. Accordingly, I am today revising the temporary policy to add the following new section. I have selected August 31, 2020, as the termination date for the temporary policy because it reflects the appropriate balancing of the relevant factors; it recognizes that the circumstances surrounding the temporary policy are changing, but also ensures that there is adequate time to adjust to the changing circumstances. As stated in the temporary policy, entities should make every effort to

comply with their environmental compliance obligations and the policy applies only to situations where compliance is not reasonably practicable as a result of COVID-19. These situations should become fewer and fewer.

The *Addendum* also provides a caveat by noting the possibility that the Policy could be terminated earlier than August 31st depending on conditions in a state or region of the country (referencing the lifting of stay-at-home orders, etc.).

Note that the Arkansas Department of Energy and Environment – Division of Environmental Quality (“DEQ”) previously issued an enforcement guidance document in response to COVID-19 related disruptions faced by regulated businesses. (A link to this document can be found [here](#).) This is important since the vast majority of environmental enforcement is undertaken by DEQ.

A copy of the *Addendum* can be downloaded [here](#).