

# Daily COVID-19 Bulletin – May 27, 2020

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Gibson Dunn's lawyers regularly counsel clients on issues raised by the COVID-19 pandemic, and we are working with many of our clients on their response to COVID-19. The following is a round-up of today's client alerts on this topic prepared by the Gibson Dunn team. Our lawyers are available to assist with any questions you may have regarding developments related to the outbreak. As always, for additional information, please feel free to contact the Gibson Dunn lawyer with whom you usually work, or any member of the firm's **Coronavirus (COVID-19) Response Team**.

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## Gaps in the EPA's COVID-19 Temporary Enforcement Policy: What Regulated Entities Should Consider as Compliance Issues Arise Due to the Pandemic

Since the U.S. Environmental Protection Agency (EPA) issued its "Temporary COVID-19 Enforcement Policy" ("temporary enforcement policy") on March 26th, many regulated entities have successfully obtained extensions of consent decrees and other deadlines. While federal and state enforcement discretion is welcome during this uncertain time, regulated entities should nonetheless proceed with some caution and not rely exclusively on the EPA's temporary enforcement policy. Indeed, some state regulators and many environmental organizations have expressed their displeasure with the temporary enforcement policy.

This client alert explores aspects of enforcement liability unaffected by the EPA's temporary enforcement policy that regulated entities should consider as they pursue relief as compliance issues arise as the result of pandemic-related issues.

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## Key Considerations for Issuers and Auditors Regarding Going-Concern Analysis

Issuers in the United States and their auditors have related, but distinct, obligations to evaluate on a periodic basis whether there is substantial doubt about the issuer's ability to continue as a going concern. In normal times, this evaluation, conducted with an appropriate level of diligence, results as to almost all major public companies in the conclusion that there is no substantial doubt about the entity's ability to meet its obligations in the months to come.

But these are not normal times. As the COVID-19 crisis takes an ever-greater toll on the American economy, and as multiple well-known companies declare bankruptcy, the going-concern assessment has taken on new relevance for issuers, auditors, and others in the financial-reporting community. As a result, the number of issuer filings that contain a going-concern disclosure appears to have substantially increased. In this piece, we review some of the significant considerations that apply to the going-concern analysis from both the issuer's and the auditor's perspectives.

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