

United States Senate
WASHINGTON, DC 20510

April 3, 2020

The Honorable Andrew R. Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator Wheeler:

We write in regard to troubling reports that the Trump administration has (1) “suspended its enforcement of environmental laws during the ongoing [coronavirus disease 2019 (COVID-19)] outbreak,” while (2) continuing to move forward amidst this public health emergency to weaken a slew of environment and public health regulations.¹ It is disturbing that the administration would use this global public health crisis as cover to weaken regulations that protect our nation’s air, water, lands, climate, and public health, especially considering that “[p]oor air can also cause lung inflammation that could worsen the symptoms of covid-19.”² There is no justification for these actions; you should not be using the COVID-19 pandemic, which has already led to thousands of deaths across the country,³ as an excuse to undermine environmental regulations and impose a broad, across-the-board moratorium on environmental enforcement.

Despite the global focus on combatting the pandemic, agencies throughout the Trump administration appear determined to use this crisis to advance President Trump’s “agenda of environmental deregulation”⁴ and “[do] not appear to be slowing down”⁵ their efforts to roll back environmental safeguards.

In response to the COVID-19 pandemic, reports indicate that the Environmental Protection Agency (EPA) has implemented broad rollbacks of enforcing existing environmental rules that would allow “power plants, factories and other facilities to determine for themselves if

¹ The Guardian, “Trump administration allows companies to break pollution laws during coronavirus,” Oliver Milman and Emily Holden, March 27, 2020, <https://www.theguardian.com/environment/2020/mar/27/trump-pollution-laws-epa-allows-companies-pollute-without-penalty-during-coronavirus>.

² Washington Post, “The coronavirus is deadly enough. But some experts suspect bad air makes it worse.,” Chris Mooney, March 15, 2020, <https://www.washingtonpost.com/climate-environment/2020/03/15/smoking-air-pollution-coronavirus/>.

³ Centers for Disease Control and Prevention, “Coronavirus Disease 2019 (COVID-19): Cases in the US,” April 3, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

⁴ New York Times, “U.S. Climate Report Warns of Damaged Environment and Shrinking Economy,” Coral Davenport and Kendra Pierre-Louis, November 23, 2018, <https://www.nytimes.com/2018/11/23/climate/us-climate-report.html>.

⁵ Grist, “Even coronavirus can’t stop Trump’s environmental rollbacks,” Emily Pontecorvo, March 23, 2020, <https://grist.org/climate/even-coronavirus-cant-stop-trumps-environmental-rollbacks/>.

they are able to meet legal requirements on reporting air and water pollution.”⁶ Under EPA rules, companies “are normally required to report when their factories discharge certain levels of pollution into the air or water,”⁷ but the administration’s new “temporary”⁸ guidelines are instead only asking “companies to ‘act responsibly’ if they cannot currently comply with rules that require them to monitor or report the release of hazardous air pollution.”⁹ These suspensions have no expiration, meaning the administration is telling corporations to regulate themselves “indefinitely.”¹⁰

The Trump administration’s actions are “a free pass for all the entities that the EPA normally regulates under the *Clean Air and Clean Water Acts*[,] ... a huge swath of industry, including facilities like refineries and chemical plants—the same types of sites that can trigger asthma attacks—even as these plants continue to operate during the pandemic.”¹¹ In the midst of a respiratory disease outbreak,¹² rolling back environmental safeguards, particularly those that protect clean air and reduce lung disease and asthma,¹³ is highly dangerous and irresponsible.

While the EPA has attempted to downplay this suspension of environmental enforcement,¹⁴ it does not dispute that the guidance “waives many of the usual requirements for monitoring, testing, sampling, and lab analysis”¹⁵ under bedrock environmental laws. Instead, the EPA affirmed that the agency “will not seek penalties for noncompliance with routine monitoring and reporting requirements”¹⁶ if companies claim that the pandemic led them to violate environmental safeguards. Indeed, the EPA claims that it expects “regulated entities to

⁶ New York Times, “E.P.A., Citing Coronavirus, Drastically Relaxes Rules for Polluters,” Lisa Friedman, March 26, 2020, <https://www.nytimes.com/2020/03/26/climate/epa-coronavirus-pollution-rules.html>.

⁷ *Id.*

⁸ Environmental Protection Agency, “EPA Corrects the Record after Reckless Reporting on Temporary Compliance Guidance,” March 30, 2020, <https://www.epa.gov/newsreleases/epa-corrects-record-after-reckless-reporting-temporary-compliance-guidance>.

⁹ New York Times, “E.P.A., Citing Coronavirus, Drastically Relaxes Rules for Polluters,” Lisa Friedman, March 26, 2020, <https://www.nytimes.com/2020/03/26/climate/epa-coronavirus-pollution-rules.html>.

¹⁰ Vox, “The EPA appears to be using coronavirus to make huge concessions to polluters,” Zeeshan Aleem, March 29, 2020, <https://www.vox.com/policy-and-politics/2020/3/29/21198674/coronavirus-epa-trump-regulations>.

¹¹ Mother Jones, “‘An Open License to Pollute’: The EPA Has Halted Enforcement Due to COVID-19,” Rebecca Leber, March 26, 2020, <https://www.motherjones.com/environment/2020/03/environmental-protection-agency-enforcement-coronavirus/>.

¹² The Guardian, “What happens to people’s lungs when they get coronavirus?,” Graham Readfearn, April 1, 2020, <https://www.theguardian.com/world/2020/mar/26/what-happens-to-peoples-lungs-when-they-get-coronavirus>.

¹³ WBUR, “New EPA Rules Will Increase Air Pollution As The World Suffers A Respiratory Pandemic,” Barbara Moran, April 2, 2020, <https://www.wbur.org/earthwhile/2020/04/02/new-epa-rules-will-increase-air-pollution-as-the-world-suffers-a-respiratory-pandemic>.

¹⁴ Environmental Protection Agency, “EPA Corrects the Record after Reckless Reporting on Temporary Compliance Guidance,” March 30, 2020, <https://www.epa.gov/newsreleases/epa-corrects-record-after-reckless-reporting-temporary-compliance-guidance>.

¹⁵ The Intercept, “EPA is Jamming Through Rollbacks That Could Increase Coronavirus Deaths,” Sharon Lerner, March 31, 2020, <https://theintercept.com/2020/03/31/epa-regulations-air-pollution-coronavirus/>; Environmental Protection Agency, “COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program,” Susan Parker Bodine, March 26, 2020, <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>.

¹⁶ Environmental Protection Agency, “EPA Corrects the Record after Reckless Reporting on Temporary Compliance Guidance,” March 30, 2020, <https://www.epa.gov/newsreleases/epa-corrects-record-after-reckless-reporting-temporary-compliance-guidance>.

comply with all obligations” and will consider any violations on a “case-by-case basis.”¹⁷ But trusting companies to effectively determine their own compliance with environmental laws, even if the companies claim that the pandemic led them to increase their pollution, is still highly dangerous, as “[i]ncremental increases in pollution could exacerbate the symptoms of other respiratory illnesses, causing more people to seek medical assistance at a time when the U.S. public health system is at a breaking point.”¹⁸

Furthermore, eight of my colleagues in the House of Representatives sent you a letter opposing your decision “that the agency will cease all enforcement actions during the coronavirus pandemic,” stating, “Environmental protections are more important than ever as we face the spread of a severe respiratory illness that is making tens of thousands of Americans sick and straining the capacity of our hospitals and healthcare workforce.”¹⁹ An EPA official responded with a statement arguing, “The [EPA] policy does not say that the COVID-19 pandemic will excuse exceedances of pollutant limitations in permits, regulations, and statutes. The EPA expects regulated entities to comply with all obligations and if they do not, the policy says that EPA will consider the pandemic, on a case-by-case basis, when determining an appropriate response.”²⁰ But these purported expectations of compliance are meaningless because EPA’s announcement indicates that the agency is not monitoring industry actions if companies claim that “compliance monitoring, integrity testing, sampling, laboratory analysis, training, and reporting or certification” are not “reasonably practicable,” that “the EPA does not expect to seek penalties for violations,” and that “the EPA does not plan to ask facilities to ‘catch-up’ with missed monitoring or reporting.”²¹

To be sure, many manufacturers, refiners, and other sources of pollution will have to close or modify their operations during the pandemic, and there are legitimate challenges to enforcing environmental regulations during a pandemic. But if businesses are operating during the crisis, particularly with the potential to exacerbate significant environmental health hazards, they should also have to comply with relevant rules and regulations and be assured that the EPA will hold them accountable for noncompliance. To the extent there are unique concerns, they should be addressed on a transparent, case-by-case basis, with public requests and full

¹⁷ Environmental Protection Agency, “EPA Corrects the Record after Reckless Reporting on Temporary Compliance Guidance,” March 30, 2020, <https://www.epa.gov/newsreleases/epa-corrects-record-after-reckless-reporting-temporary-compliance-guidance>.

¹⁸ Scientific American, “EPA to Ease Pollution Enforcement, Which Could Exacerbate Lung Illnesses,” Jean Chemnick, March 30, 2020, <https://www.scientificamerican.com/article/epa-to-ease-pollution-enforcement-which-could-exacerbate-lung-illnesses/>.

¹⁹ Letter from U.S. Representatives Michael Quigley, Gerald Connolly, Doris Matsui, Paul Tonko, Alan Lowenthal, Donald McEachin, Matthew Cartwright, and Chellie Pingree to EPA Administrator Andrew Wheeler, March 31, 2020, <https://lowenthal.house.gov/sites/lowenthal.house.gov/files/SEEC%20Leadership%20Letter%20re%20EPA%20Enforcement%203.31.pdf>.

²⁰ The Hill, “House Democrats blast EPA as agency suspends monitoring amid coronavirus,” Rebecca Beitsch, March 31, 2020, <https://thehill.com/policy/energy-environment/490449-house-democrats-blast-epa-as-agency-suspends-enforcement-of>.

²¹ Environmental Protection Agency, “COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program,” Susan Parker Bodine, March 26, 2020, <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>.

explanations for whether the pandemic affected operations, not with a broad, nationwide monitoring and compliance moratorium.

We are also concerned that, at the same time you have essentially adopted a compliance moratorium, you are moving forward to implement regulations to undermine a slew of important environmental regulations. As the nation fights the COVID-19 pandemic, the EPA and the Department of Transportation has finalized plans to “rollback Obama-era automobile fuel efficiency standards, relaxing efforts to limit climate-warming tailpipe pollution and virtually undoing the government’s biggest effort to combat climate change... even as the White House was consumed with responding to the coronavirus crisis”²² And the Trump administration is reportedly making plans to implement “a rule that would allow companies to kill birds without repercussions, a total overhaul of the bedrock National Environmental Policy Act, and new restrictions on the types of scientific research the EPA can use in decisions that affect public health.”²³

Expert reviews of the finalized automobile efficiency rule, described it as “a move that could undermine public health following the coronavirus crisis,”²⁴ demonstrated that, “by allowing more pollution into the air, the rule would measurably contribute to more premature deaths from lung and respiratory illnesses, piling on more societal and economic costs.”²⁵ It appears that despite the ongoing pandemic, you have continued to advance the harmful, ideological agenda of deregulation, instead of environmental protection.

The Trump administration’s actions at the EPA are economic, environmental, and moral failures. A global health and economic crisis is not an excuse for swift action to help industries pollute as much as possible. Allowing polluting industries to go without effective regulation or enforcement by the EPA will instead make the crisis worse. Press reports show that, “experts note that damage to the lungs from pollutants that result from combustion -- whether inhaled deliberately by smokers, or inadvertently by those in regions with poor air quality -- may increase the risk of respiratory tract infections from viruses such as the novel coronavirus. Poor air can also cause lung inflammation that could worsen the symptoms of covid-19.”²⁶

While you have claimed that the EPA “is committed to protecting human health and the environment,”²⁷ your actions and the actions of the Trump administration during the coronavirus pandemic demonstrate the opposite. Air pollution will make the health effects of COVID-19 worse; as the crisis escalates, the EPA should be working to ensure that polluters do not threaten

²² New York Times, “U.S. to Announce Rollback of Auto Pollution Rules, a Key Effort to Fight Climate Change,” Coral Davenport, March 30, 2020, <https://www.nytimes.com/2020/03/30/climate/trump-fuel-economy.html>.

²³ Grist, “Even coronavirus can’t stop Trump’s environmental rollbacks,” Emily Pontecorvo, March 23, 2020, <https://grist.org/climate/even-coronavirus-cant-stop-trumps-environmental-rollbacks/>.

²⁴ E&E News, “Trump admin finalizes clean cars rollback,” Maxine Joselow, March 31, 2020, <https://www.eenews.net/stories/1062750601>.

²⁵ New York Times, “Trump’s Path to Weaker Fuel Efficiency Rules May Lead to a Dead End,” Coral Davenport, February 13, 2020, <https://www.nytimes.com/2020/02/13/climate/trump-fuel-economy-rollback.html>.

²⁶ Washington Post, “The coronavirus is deadly enough. But some experts suspect bad air makes it worse.,” Chris Mooney, March 15, 2020, <https://www.washingtonpost.com/climate-environment/2020/03/15/smoking-air-pollution-coronavirus/>.

²⁷ New York Times, “E.P.A., Citing Coronavirus, Drastically Relaxes Rules for Polluters,” Lisa Friedman, March 26, 2020, <https://www.nytimes.com/2020/03/26/climate/epa-coronavirus-pollution-rules.html>.

public health. We are deeply troubled by your actions, and we urge you to take immediate steps to end the enforcement moratorium and stop your efforts to undermine environmental regulations during the COVID-19 crisis.

In order to better understand the rationale behind the Trump administration's suspension of environmental regulations at the EPA until further notice, please provide answers to the following questions by Friday, April 17, 2020:

1. Under what authority did the EPA suspend its enforcement of environmental laws and replace it with industry self-reporting requirements?
2. What was the rationale for this decision? What criteria will the EPA use to determine if the enforcement moratorium should be lifted?
 - a. Please explain in detail how the EPA will determine when the suspension of enforcing compliance will end and how the public will be notified of these changes.
 - b. Please explain why this guidance is being applied retroactively to Friday, March 13, 2020.²⁸
3. Please explain how regulated industries are to maintain records during the EPA enforcement moratorium. Please explain why the agency is declining to commit to conduct retrospective enforcement reviews.
4. Which agency officials were responsible for the decision to enact an enforcement moratorium? Were officials in the Office of General Counsel consulted on this decision, and if so, what advice did they provide to you and other key decision makers?
5. Did you meet with or communicate with officials or lobbyists representing the oil and gas, coal, automobile, or other polluting industries prior to announcing this decision? Please provide a record of all meetings and communications regarding this decision with these industry representatives.
6. Did the EPA conduct any analyses about the impact of this decision on pollutant emissions, especially their impacts on environmental justice communities?
 - a. Will the decision result in increased emissions of any air pollutants? If so, what are these pollutants and what is the scope of the increase?
 - b. Will the decision have any impacts on asthma or lung disorders? If so, what is the impact?
 - c. Will this decision result in increased pollution of drinking water or drinking water sources?

²⁸ Environmental Protection Agency, "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program," Susan Parker Bodine, March 26, 2020, <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>.

We look forward to your response.

Sincerely,

Handwritten signature of Elizabeth Warren in black ink.

Elizabeth Warren
United States Senator

Handwritten signature of Edward J. Markey in blue ink.

Edward J. Markey
United States Senator