

United States Senate
WASHINGTON, DC 20510

August 24, 2020

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

Dear Administrator Wheeler:

We write to you in regards to the Trump administration's efforts to (1) "[suspend] its enforcement of some 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 environmental and public health regulations.¹ On March 26, 2020, the Environmental Protection Agency (EPA) announced that it would use the global public health crisis to implement a broad moratorium on enforcing existing environmental protections that would allow "power plants, factories and other facilities to determine for themselves if they are able to meet legal requirements on reporting air and water pollution."² On Monday, June 29, 2020, the EPA announced that the suspension of environmental enforcement will end on Monday, August 31, 2020.³

There was no justification to use the COVID-19 pandemic as an excuse to undermine environmental and public health safeguards and to impose a broad, across-the-board moratorium on environmental enforcement. It is critical that the EPA provide the public with information about its abdication of its mission to "protect human health and the environment" and to "ensure that... Federal laws protecting human health and the environment are administered and enforced fairly, effectively and as Congress intended."⁴

Reports show that facilities taking advantage of the Trump administration's broad suspension of enforcing environmental laws have deeply harmful environmental records. A recent analysis found that "[m]ore than 50 facilities across the country that have faced

¹ The Guardian, "Trump administration allows companies to break pollution laws during coronavirus," Oliver Milman and Emily Holden, May 8, 2020, <https://www.theguardian.com/environment/2020/mar/27/trump-pollution-laws-epa-allows-companies-pollute-without-penalty-during-coronavirus>.

² 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>; 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>.

³ Environmental Protection Agency, "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program: Addendum on Termination," Susan Parker Bodine, June 29, 2020, <https://www.epa.gov/sites/production/files/2020-06/documents/covid19addendumontermination.pdf>.

⁴ Environmental Protection Agency, "About EPA: Our Mission and What We Do," February 7, 2018, <https://www.epa.gov/aboutepa/our-mission-and-what-we-do>.

enforcement actions for alleged Clean Water Act violations are among those taking advantage of an [EPA] policy that lets companies forgo pollution monitoring during the pandemic.”⁵ Rather than protect our environment and public health, the Trump administration and the EPA during your tenure have instead decided to protect polluters from accountability.

These findings are extremely troubling, as the COVID-19 pandemic has already highlighted deep disparities and the disproportionate impact of environmental harm on low-income communities and communities of color. The Trump administration’s actions ultimately amount to “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.”⁶ These actions exacerbate environmental injustices, given that “racial disparities in exposure to environmental pollutants are greater factors that remain even after controlling for income” and that middle-class Black Americans “are exposed to much higher levels of industrial chemicals, air pollution and poisonous heavy metals, as well as pathogens, than are profoundly poor white people” across urban and rural areas.”⁷

On April 3, 2020, we wrote to you regarding the EPA’s suspension of environmental regulations at the EPA until further notice,⁸ noting that, under this suspension, businesses with the potential to exacerbate significant environmental health hazards would not have to face EPA accountability for noncompliance with environmental safeguards.⁹ We also expressed deep concerns with the Trump administration’s ongoing work to roll back other environmental safeguards amid the pandemic.¹⁰ We asked you to explain the EPA’s authority to suspend enforcement of environmental safeguards and replace them with self-reporting requirements; the rationale for such a rollback and how it is applied; how businesses are to maintain records during the moratorium; and the justification for the suspension and how the agency arrived at this policy decision.¹¹ Not only did the EPA fail to respond to key parts of our inquiries, it failed to explain how public health would remain protected amid the crisis and raised further concerns.

⁵ The Hill, “Dozens of facilities skipping out on EPA pollution monitoring have prior offenses,” Rachel Frazin, July 29, 2020, <https://thehill.com/policy/energy-environment/509489-dozens-of-facilities-skipping-out-on-epa-pollution-monitoring-have>.

⁶ 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/>.

⁷ Nature, “How environmental racism is fueling the coronavirus pandemic,” Harriet Washington, May 19, 2020, <https://www.nature.com/articles/d41586-020-01453-y>.

⁸ Letter from Senators Warren and Markey to Environmental Protection Agency Administrator Wheeler, April 3, 2020, <https://www.warren.senate.gov/imo/media/doc/04.03.2020%20Letter%20from%20Sens.%20Warren%20and%20Markey%20to%20Administrator%20Wheeler.pdf>.

⁹ *Id.*

¹⁰ New York Times, “The Trump Administration Is Reversing 100 Environmental Rules. Here’s the Full List.,” Nadja Popovich, Livia Albeck-Ripka, and Kendra Pierre-Louis, July 15, 2020, <https://www.nytimes.com/interactive/2020/climate/trump-environment-rollbacks.html>.

¹¹ Letter from Senators Warren and Markey to Environmental Protection Agency Administrator Wheeler, April 3, 2020, <https://www.warren.senate.gov/imo/media/doc/04.03.2020%20Letter%20from%20Sens.%20Warren%20and%20Markey%20to%20Administrator%20Wheeler.pdf>.

The EPA's May 8, 2020, response argued that the enforcement suspension "clearly states that regulated parties are expected to 'make every effort to comply with their environmental compliance obligations.'"¹² Additionally, the agency wrote, "[w]ith respect to routine monitoring and reporting, the [enforcement suspension] states that if, for example, a sample is not collected or a deadline is missed and the facility documents that the cause is COVID-19, then the EPA will not seek penalties."¹³ The EPA also stated that the enforcement suspension "does not excuse exceedances of pollutant limitations... due to the COVID-19 public health emergency" and that "EPA expects regulated entities to comply with all obligations and if they do not... the Agency will consider the public health emergency, on a case-by-case basis, when determining an appropriate response."¹⁴

This response was all but meaningless: it did not indicate what standards facilities would be required to document that COVID-19 was the cause of a missed deadline or sample collection, and it did not give any indication of how the agency would consider the public health emergency "on a case-by-case basis" or a timeline for doing so, when determining the response to an exceedance of pollutant limitations.¹⁵ The EPA also did not provide key information, such as the specific information regulated entities would need to record to demonstrate that the pandemic caused any noncompliance, the threshold of difficulty that would justify non-enforcement in any instance, how or whether the EPA would review non-enforcement, and who would be responsible for reviewing non-enforcement. The EPA also declined to state what impacts on public health would be deemed unacceptable, how and when affected communities would be informed of potential dangers to their health, or how the agency would address cumulative exposures in locations with many pollution sources that may be in noncompliance. The response thus indicated that EPA had replaced clear, enforceable pollutant standards with a vague and indefinite get-out-of-jail free policy.¹⁶ Additionally, our letter asked the EPA to "[p]lease explain why the agency is declining to commit to conduct retrospective enforcement reviews,"¹⁷ but the EPA declined to address this request.¹⁸

The EPA letter was also not responsive to our initial concerns that "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"¹⁹ and that "[i]ncremental increases in pollution could exacerbate the symptoms of other respiratory

¹² Letter from Environmental Protection Agency Associate Administrator for the Office of Congressional and Intergovernmental Relations Brazauskas to Senators Warren and Markey, May 8, 2020.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Letter from Senators Warren and Markey to Environmental Protection Agency Administrator Wheeler, April 3, 2020,

<https://www.warren.senate.gov/imo/media/doc/04.03.2020%20Letter%20from%20Sens.%20Warren%20and%20Markey%20to%20Administrator%20Wheeler.pdf>.

¹⁸ Letter from Environmental Protection Agency Associate Administrator for the Office of Congressional and Intergovernmental Relations Brazauskas to Senators Warren and Markey, May 8, 2020.

¹⁹ Letter from Senators Warren and Markey to Environmental Protection Agency Administrator Wheeler, April 3, 2020,

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illnesses, causing more people to seek medical assistance at a time when the U.S. public health system is at a breaking point.”²⁰ As we stated in our letter, “[i]n the midst of a respiratory disease outbreak,²¹ rolling back environmental safeguards, particularly those that protect clean air and reduce lung disease and asthma,²² is highly dangerous and irresponsible.”²³

It remains deeply troubling that the EPA has decided to protect polluting industries and weaken public health safeguards amidst a public health crisis. Rather than implement and enforce bedrock environmental protections, the Trump administration relinquished its responsibilities and allowed polluters to regulate themselves, with no clear guidelines for how the EPA would hold them accountable. As the Trump administration has now set an end date for its suspension of environmental enforcement, the EPA must explain to the public how regulated industries maintained records during the enforcement moratorium and why the agency declined to commit to conduct retrospective enforcement reviews. The administration must also review and explain how environmental health potentially deteriorated amid the crisis and its lack of enforcing environmental regulations.

At a time when the public needs an EPA that is committed to environmental protections and public health safeguards, the Trump administration opted to abandon its responsibilities and forgo its mission to “protect human health and the environment.”²⁴ These actions are unacceptable, and the EPA must provide answers about its failure to meet its basic obligations.

In order for us to understand the harm caused by the Trump administration’s suspension of environmental enforcement, we ask that you respond to the following questions by Monday, August 31, 2020:

1. Under what authority did the EPA suspend its enforcement of environmental laws and replace it with industry self-reporting requirements?
2. Please explain in detail how the EPA determined when the suspension of enforcing compliance would end.
 - a. Please explain why the guidance, announced on Thursday, March 26, 2020, was retroactively applied to Friday, March 13, 2020.²⁵

²⁰ 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/>.

²¹ The Guardian, “What happens to people’s lungs when they get coronavirus?,” Graham Readfearn, March 26, 2020, <https://www.theguardian.com/world/2020/mar/26/what-happens-to-peoples-lungs-when-they-get-coronavirus>.

²² 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>.

²³ Letter from Senators Warren and Markey to Environmental Protection Agency Administrator Wheeler, April 3, 2020, <https://www.warren.senate.gov/imo/media/doc/04.03.2020%20Letter%20from%20Sens.%20Warren%20and%20Markey%20to%20Administrator%20Wheeler.pdf>.

²⁴ Environmental Protection Agency, “About EPA: Our Mission and What We Do,” February 7, 2018, <https://www.epa.gov/aboutepa/our-mission-and-what-we-do>.

²⁵ 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->

- b. The EPA announced the August 31 end of the enforcement suspension on Monday, June 29, 2020.²⁶ On Monday, June 1, 2020, however, the EPA outlined its plans to reopen EPA offices, despite potential health and safety risks to EPA staff.²⁷
 - i. Please explain why the EPA waited four weeks between its announced transition for EPA employees to physically return to EPA offices and the announced end of the enforcement moratorium.
3. Please explain how regulated entities have been expected to maintain records during the EPA enforcement moratorium.
 - a. Please explain in detail how the EPA ensured that these records included sufficient details and were properly and adequately maintained during the enforcement moratorium.
 - i. Please explain if these records and how the EPA reviewed and considered these records will be made public.
 - b. Please explain why the agency did not commit to conduct retrospective environmental enforcement reviews.
4. Which agency officials were responsible for the decision to enact an enforcement moratorium?
 - a. 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?
 - b. Which officials were or will be responsible for deciding whether the EPA would or will pursue enforcement for any noncompliance?
5. Please provide information and copies of any communications you have had with officials or lobbyists representing the oil and gas, coal, automobile, utilities, petrochemical, or other polluting industries regarding the decision to suspend environmental enforcement before and after the enforcement suspension's announcement.
6. Did the EPA conduct any analyses about the impact of this decision on pollutant emissions, especially their impacts on frontline communities?
 - a. Please explain if the EPA will release information regarding the enforcement suspension's impacts on air pollutants, asthma or lung conditions, and pollution of drinking water or drinking water sources.

[03/documents/oecamemooncovid19implications.pdf](#); 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>.

²⁶ Environmental Protection Agency, "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program: Addendum on Termination," Susan Parker Bodine, June 29, 2020, <https://www.epa.gov/sites/production/files/2020-06/documents/covid19addendumontermination.pdf>.


²⁷ Government Executive, "EPA Watchdog To Review the Agency's Reopening Process," Courtney Publ , July 6, 2020, <https://www.govexec.com/oversight/2020/07/epa-watchdog-review-agencys-reopening-process/166658/>; The Hill, "EPA transition back to the office alarms employees," Rebecca Beitsch, August 3, 2020, <https://thehill.com/policy/energy-environment/510336-epa-transition-back-to-the-office-alarms-employees>.

7. How many regulated entities in total have indicated that they missed a deadline or sample collection between March 13, 2020, and your receipt of this letter?
 - a. How many of these regulated entities in total have indicated that they missed deadlines or sample collections because of COVID-19?
 - b. How did the EPA review these claims?
 - c. In how many cases did the EPA find that the claims of COVID-19 causality were not valid?
 - d. Please provide detailed documentation of the EPA's enforcement activity between March 13, 2020, and upon your receipt of this letter.

8. How many regulated entities in total have indicated that they exceeded a pollution standard between March 13, 2020, and your receipt of this letter?
 - a. How did the EPA conduct a case-by-case analysis of these exceedances?
 - b. In how many of these cases did the EPA take enforcement action?
 - c. In how many cases did the EPA or regulated entities inform potentially affected communities about potential risks to environmental health?

We look forward to your response.

Sincerely,


Elizabeth Warren
United States Senator


Edward J. Markey
United States Senator