



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C., 20460

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

April 2, 2020

The Honorable Mike Quigley
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Quigley:

On behalf of the U.S. Environmental Protection Agency, I am writing in response to your March 31, 2020, letter regarding the Agency's March 26, 2020, Temporary Policy on COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program (Temporary Policy).

I am writing to clarify the misconceptions and misreporting regarding the Temporary Policy. Let me assure you that, contrary to allegations you may have read, EPA continues to enforce the environmental laws and protect human health and the environment nationwide.

EPA's Temporary Policy was created in response to inquiries from the states and the regulated community. Over the past few weeks, the Agency has been inundated with questions from both about how to handle the current extraordinary situation where contractors are not available because of travel restrictions, state and local governments are imposing stay at home orders, and the number of people who have contracted COVID-19 and are in quarantine is rising. EPA developed the Temporary Policy to allow the Agency to prioritize its resources to respond to acute risks and imminent threats, rather than making up front case-by-case determinations regarding routine monitoring and reporting.

The nation is facing an unprecedented situation with regard to COVID-19 that presents an imminent health risk to workers across America. These risks are both new and unpredictable. As of the end of March, the Centers for Disease Control and Prevention reported 163,539 cases of COVID-19 and 2,860 deaths from this disease, in the United States. Health experts expect those numbers to increase significantly.

In carrying out EPA's mission to protect both human health and the environment the Agency is working to ensure that critical services, including access to clean water necessary to fighting COVID-19, are not interrupted during this national emergency. EPA is operating in the best interest of all Americans, including those who are working to keep our infrastructure running and monitoring environmental compliance. These workers face immediate health risks from this global emergency. Irresponsible allegations that EPA is giving industry a license to pollute mischaracterizes the Agency's response to those risks and impugns the work that the dedicated Agency officials continue to perform during this challenging time.

To be clear, EPA continues to enforce our nation's environmental laws. We will continue to work with federal, state, and tribal partners to ensure that facilities are meeting regulatory requirements, while taking appropriate steps to protect the health of our staff and the public.

In this unprecedented time, it is critical for the EPA to prioritize our resources and recognize the current risks facing the American people. Some have argued that the Agency should direct resources towards responding to each enforcement discretion request separately. However, this argument ignores the fact that the COVID-19 pandemic is a nationwide phenomenon. Diverting EPA staff time to respond to individual questions about routine monitoring and reporting requirements would hinder EPA's ability to focus on continued protection of human health and the environment.

By way of comparison, in 2005-06 Hurricanes Katrina and Rita impacted only five states. In response, EPA, under the leadership of former Administrator Stephen Johnson and former Assistant Administrator Granta Nakayama, issued at least 41 separate enforcement discretion actions as well as one fuel waiver and 21 force majeure letters. In 2012, Hurricane Sandy impacted only four states. In response, EPA, under the leadership of former Administrator Lisa Jackson and former Assistant Administrator Cynthia Giles issued or invoked at least 13 separate enforcement discretion actions, as well as five fuel waivers. In 2012, eight of the enforcement discretion actions issued by former Assistant Administrator Giles suspended enforcement of entire sections of the Code of Federal Regulations, as well as state implementation plan and permit requirements, rather than making facility specific determinations. The current COVID-19 pandemic impacts all areas of all 50 states. Making facility specific determinations at this time regarding the impact of the pandemic would truly shut down EPA's enforcement and compliance assurance program.

The Temporary Policy does require case-by-case determinations. But under the Temporary Policy, those determinations will be made after the pandemic is over and EPA reserves the right to disagree with any assertion that noncompliance was caused by the pandemic. Specifically, the Temporary Policy clearly states that EPA is not seeking penalties for noncompliance *only* in circumstances that involve routine monitoring and reporting requirements, *if*, on a case-by-case basis, EPA agrees that such noncompliance was caused by the COVID-19 pandemic. In this scenario, regulated parties must document the basis for any claim that the pandemic prevented them from conducting that routine monitoring and reporting and present it to EPA upon request. It is in the public interest to allow critical infrastructure to remain operational while also allowing workers to exercise social distancing by moving to shift work and reducing the number of people at a facility at any one time.

The Temporary Policy does not excuse exceedances of pollutant limitations in permits, regulations, and statutes due to the COVID-19 pandemic. EPA expects regulated entities to comply with all obligations and if they do not, the Temporary Policy says that the Agency will consider the pandemic, on a case-by-case basis, when determining an appropriate response. Further, in cases that may involve acute risks or imminent threats, or failure of pollution control or other equipment that may result in exceedances, EPA's willingness to provide even that consideration is conditioned on the facility contacting the appropriate EPA region, or authorized state or tribe, to allow regulators to work with that facility to mitigate or eliminate such risks or threats.

EPA expects regulated facilities to comply with regulatory requirements, where reasonably practicable, and to return to compliance as quickly as possible, once the COVID-19 threat subsides. Additionally, the Temporary Policy makes clear that EPA expects operators of public water systems to continue normal operations and maintenance during this time, as well as required sampling, to ensure the safety of vital drinking water supplies.

The Agency strongly disagrees with those who argue that a more appropriate response to this public health crisis would be to force facilities to either shut down or to put people at risk by keeping all their workers at the facility at the same time, to continue routine monitoring and reporting in addition to maintaining the operation of critical infrastructure, including pollution control equipment. It also is no solution to force facilities to choose one of those options until EPA or a state could review the facts of each situation and approve an individual, site-specific no action assurance. Presidential Policy Directive 21 identifies 16 critical infrastructure sectors. As noted above, making up front individual determinations of whether every facility in every sector can continue routine monitoring and reporting is not feasible.

The measures in this Temporary Policy are temporary and will be lifted as soon as normal operations can resume, which may occur sooner in some locations than others. EPA takes its environmental mandate to protect human health and the environment very seriously and will continue to carry out our mission during this time.

Sincerely,



Susan Parker Bodine
Assistant Administrator

cc: Members of the U.S. House of Representatives