



1000 Vermont Avenue, NW
Suite 1100
Washington, DC 20005
main: 202-296-8800
fax: 202-296-8822
www.environmentalintegrity.org

March 26, 2020

The Hon. Susan Bodine
Assistant Administrator for
Enforcement and Compliance Assurance
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Delivered via Email

Re: Letter Objecting to Blanket EPA Waivers for Polluters During Coronavirus Crisis and Calling for EPA to Protect Public Health

Dear Assistant Administrator Bodine:

We write to oppose EPA's apparent plan to waive certain environmental compliance requirements for petrochemical plants and other polluting industries in response to the coronavirus. While it may be reasonable in limited circumstances for EPA to exercise discretion on a case-by-case basis to temporarily refrain from enforcement where the pandemic has clearly undermined a facility's ability to comply, we oppose any blanket or advance waiver of environmental requirements for several reasons.

It is not clear why refineries, chemical plants, and other facilities that continue to operate and keep their employees on the production line will no longer have the staff or time they need to comply with environmental laws. Again, EPA can grant waivers where sources can show how the coronavirus makes compliance with certain requirements impossible. But what is the basis for presuming that the pandemic means companies can no longer comply with environmental rules while they continue to operate and process all other forms of corporate "paperwork," e.g., applications for permits to expand, detailed comments to support the rollback of various environmental rules, and contracts for the sale or purchase of goods and services?

Contrary to assertions by the American Petroleum Industry (API) and other interest groups, the suspension of monitoring and reporting requirements would have a very specific impact on public health and safety in many cases. Allowing a company to postpone the repair of equipment that leaks toxic gases into the atmosphere, as API has suggested, leaves the public exposed to those pollutants for longer periods of time, increases the risk of fire and explosion, and is not just a paperwork concern. For another example, Clean Air Act rules limiting hazardous air pollution require refineries to monitor benzene levels at their fencelines, and to take corrective action whenever annual concentrations of this deadly pollutant exceed 9 micrograms per cubic meter.

Monitoring reports reveal that at least 10 refineries in Illinois, Louisiana, Mississippi, Pennsylvania, New Mexico and Texas exceeded this annual threshold in the fourth quarter of 2019. Pasadena Refining Systems in Texas reported that benzene levels along part of their boundary averaged 565 micrograms per cubic meter between October 16 and October 30 of 2019, or nearly twice the ten-hour exposure limit recommended by the National Institute of Occupational Safety and Health. Take away this monitoring, and you will leave both plant workers and communities blind to these hazards, and forestall the corrective action required when benzene levels get too high. Actions that obscure the release toxins or other air pollutants that exacerbate asthma, breathing difficulty, and cardiovascular problems in the midst of a pandemic that can cause respiratory failure is irresponsible from a public health perspective.

The Environmental Protection Agency has not shown the same concern for the impact the coronavirus has had on the ability of community and public interest groups to respond to various proposals to weaken environmental standards. In fact, EPA recently denied a request to extend the comment period for the so-called “science transparency” rule, at a time when public health officials who may oppose that decision have had to turn their attention to coronavirus. Our organizations face the same challenges keeping up with the rulemaking process as do large corporations, but with fewer resources. As pointed out by Mustafa Santiago Ali, EPA’s former Associate Administrator for Environmental Justice, communities already hardest hit by air pollution and particularly vulnerable to the virus may have no meaningful opportunity to comment during the current pandemic.

We understand the coronavirus is a public health emergency that may require a flexible response from EPA. That response must be tailored to specific and appropriate circumstances and not offer a blanket waiver of requirements that many companies that are up and running may have no trouble meeting.

We ask that EPA post online any agreements with regulated sources to delay or reduce environmental requirements, with a clear explanation of how the coronavirus pandemic made such decisions necessary and what steps facilities will take to reduce their health impacts. This would include the public posting of any “no action assurances” EPA issues for industries, along with an explanation of how the action is consistent with EPA’s written policy against no action assurances.

In all cases, EPA should provide a clear explanation of how the coronavirus pandemic made such agreements or no action assurances necessary. EPA should also provide notice and a meaningful opportunity to comment on any proposed changes to consent decrees, and ensure that states authorized to implement federal environmental rules do not inappropriately waive those requirements and are equally transparent about their decisions.

Thank you for considering our views.

Respectfully,

Eric Schaeffer, Executive Director, Environmental Integrity Project

Mary Greene, Deputy Director, Environmental Integrity Project

Luke Metzger, Executive Director, Environment Texas

Mike Tidwell, Executive Director, Chesapeake Climate Action Network

Cynthia Giles, former EPA Assistant Administrator for Enforcement and Compliance Assurance

Jonny Vasic, Executive Director, Utah Physicians for a Healthy Environment

Dr. Elena Craft, Toxicologist and Senior Director for Climate and Health, Environmental Defense Fund

Phillip Musegaas, Vice President of Programs and Litigation, Potomac Riverkeeper Network

Adrian Shelley, Texas Office Director, Public Citizen

David Masur, Executive Director, PennEnvironment

Anne Rolfes, Director, Louisiana Bucket Brigade

Rebecca Sobel, Senior Climate and Energy Campaigner, Wild Earth Guardians

Dr. Indra Frank, Environmental Health & Water Policy Director, Hoosier Environmental Council

Katyln Schmidt, Staff Attorney, Waterkeepers Chesapeake

Terry Spence, Executive Director, Socially Responsible Agricultural Project

David Reed, Co-Executive Director, Chesapeake Legal Alliance

Hannah Connor, Senior Attorney, Center for Biological Diversity

John Rumpler, Senior Attorney, Environment America

Scott Edwards, Director Food & Water Justice, Food & Water Watch

Ted Evgeniadis, Lower Susquehanna Riverkeeper

Robin Schneider, Executive Director, Texas Campaign for the Environment

Jenn Aiosa, Executive Director, Blue Water Baltimore

Pat Gallagher, Legal Director, Sierra Club

Kelly Hunter Foster, Senior Attorney, Waterkeeper Alliance

Kristin Alexander, Executive Director, Potomac Valley Audubon Society

Aaron Mintzes, Senior Policy Counsel, Earthworks

Rev. Sandra L. Strauss, Director of Advocacy & Ecumenical Outreach, Pennsylvania Council of Churches

Robin Blakeman, Project Coordinator, Ohio Valley Environmental Coalition

Bill Johnson, Rappahannock Group Co-Chair, Rappahannock Group of the Sierra Club

Dalal Anne Aboulhosn, Deputy Legislative Director, Sierra Club

Abigail M. Jones, Senior Attorney, Citizens for Pennsylvania's Future (PennFuture)

Drew Ball, Director, Environment North Carolina

Sara Schneeberg Robinson, Retired Former EPA OGC Assistant General Counsel

Gary Zuckett, Executive Director, WV Citizen Action Group

Eric Engle, Chairman, Mid-Ohio Valley Climate Action

Lindsay Newsome, Program Director, Virginia Association for Biological Farming

Douglas John Imbrogno, Editor, Changing Climate Times

Lynn Thorp, National Campaigns Director, Clean Water Action/Clean Water Fund

Kim Coble, Executive Director, Maryland League of Conservation Voters

James Pfiffer, Executive Director, Chemung River Friends

Mary E Smith, President, Cleanwater Linganore, Inc

Robert K. Musil, Ph.D., President & CEO, Rachel Carson Council

Bob Dreher, Senior Vice President Conservation Programs & General Counsel, Defenders of Wildlife

Susan O'Handley, President, Delaware-Otsego Audubon Society

Larry V. Thomas, President, West Virginia Highlands Conservancy

Laura Daniel Davis, Chief of Policy and Advocacy, National Wildlife Federation

Dustin White, Project Coordinator, Ohio Valley Environmental

Kristin Reilly, Director, Choose Clean Water Coalition

Lisa DePaoli, Outreach Coordinator, Center for Coalfield Justice

Selah Raines, Director, Mountain Lakes Preservation Alliance

Darryl Molina Sarmiento, Executive Director, Communities for a Better Environment

Alice Melendez, Local Coordinator, Extinction Rebellion Kentucky

Barb Trader, Facilitator, Multifaith Alliance of Climate Stewards

Erin Kitchell, US Environmental Justice Program Director, Namati

Heather Cantino, Steering Committee Chair, Athens County's Future Action Network

Beka Economopoulos, Executive Director, The Natural History Museum

Kathy Phillips, Executive Director, Assateague Coastal Trust

Freeda Cathcart, Director, The Rural Project

Russell Chisholm, Co-Chair, Protect Our Water Heritage Rights

Ann Coren, Steering Committee, Transition Howard County

Philip Irwin, Founder, Rappahannock League for Environmental Protection

Vernon Haltom, Executive Director, Coal River Mountain Watch

Jeanne Braha, Executive Director, Rock Creek Conservancy

Lisa Alexander, Executive Director, Audubon Naturalist Society

Bakeyah S. Nelson, Executive Director, Air Alliance Houston

List of names updated at 11:00 am on April 1, 2020.