

EPA's relaxed enforcement of pollution reporting due to COVID-19 ends in August

June 30 2020, by Michael Wilner, McClatchy Washington Bureau



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The Environmental Protection Agency will end a temporary policy that relaxed reporting requirements on pollutants due to the coronavirus at the end of August, amid criticism that the pandemic policy has

jeopardized public health.

Democratic lawmakers, several states and the agency's inspector general all criticized the EPA [policy](#) that went into effect in March, warning that it would lead to increased pollution and decreased monitoring. They also expressed concern that the policy did not have a clear end date.

The pandemic policy will now officially expire at midnight on Aug. 31, Susan Parker Bodine, author of the policy and assistant administrator for enforcement and compliance assurance at the EPA, told McClatchy in an interview.

The temporary policy was aimed at regulated facilities struggling to meet the EPA's various reporting requirements amid increased remote work. When the agency put the policy in place, it said it would not seek penalties if facilities dealing in pollutants missed "routine reporting" obligations and could prove it was caused by the outbreak of COVID-19.

"We picked the August 31 date as the termination date to give folks—the regulatory community and the states—a heads up to allow them to prepare for the sunseting of the policy," Bodine said.

The policy has generated controversy. Democratic lawmakers, including leadership on the House Committee on Energy and Commerce, claimed in a letter to the EPA administrator that the agency's COVID-19 enforcement policy required little proof from noncompliant facilities and "creates license for companies to violate our environmental laws."

Nine states, including California, New York and Illinois, asked a [federal court](#) this month to issue a preliminary injunction on the policy, which they said in a brief would result in "increased pollution threatening our residents."

And a statement from the EPA's Office of Inspector General warned this month that "additional reduction in enforcement activity places the EPA's regulatory mission at greater risk and threatens the Agency's overall mission to protect human health and the environment."

Shortly before the policy was announced, the American Petroleum Institute asked the Trump administration to "temporarily waive nonessential compliance obligations." Days later, the EPA outlined its new pandemic policy, freezing penalties for "violations of routine compliance monitoring, integrity testing, sampling, laboratory analysis, training, reporting and certification obligations," the policy statement said.

In a letter addressed to House Energy and Commerce Committee Chairman Frank Pallone, D-N.J., and obtained by McClatchy, the EPA said that critics of the policy "fundamentally misunderstood" its design.

"The idea that we would shift our resources away from dealing with hazardous air pollution in communities, non-attainment areas, drinking water, and shift it to target a site solely for failure to submit a routine report—that would not be an appropriate use of our resources," Bodine said.

Pallone and other Democratic lawmakers had criticized the EPA for not requiring companies to proactively notify the agency that they would not be fulfilling their reporting obligations due to the pandemic, putting the burden on the EPA to seek out noncompliant companies for explanations.

"We asked EPA to make changes to its COVID enforcement policy because we're concerned that, as written, it would leave environmental and [public health](#) protections unenforced at a time they're needed most," Pallone told McClatchy in a statement Monday. "I look forward to

learning exactly how this Administration plans to make the modifications we requested and ensure our laws are fully enforced."

But the EPA letter, dated Monday, notes that the agency has opened 87 criminal enforcement cases, charged 27 defendants, initiated 275 civil enforcement actions and concluded 296 civil enforcement actions since March 16—evidence, Bodine said, that the agency's enforcement program continues to be robust.

"We know if they submitted a report or not, because we have our database," Bodine said. "If there was a failure to submit a report, then that will be very transparent to us, and they will have to demonstrate to us why we would not add that as another environmental violation when we target the site for inspection and look at their noncompliance across the board."

Bodine would not comment on whether the newly announced termination date for the temporary pandemic policy would affect ongoing litigation that called for an immediate halt to its implementation.

But she defended the policy as an effort to protect the health of Americans seeking to work remotely during the pandemic, and pushed back against the states' claim in federal court that the policy exceeds the agency's legal authorities.

"Every administration has exercised enforcement discretion," she said. "The allegation that somehow, through an enforcement policy, I can suspend the legal obligation to comply with environmental law—that is just certainly not true. I don't have authority to do that."

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Citation: EPA's relaxed enforcement of pollution reporting due to COVID-19 ends in August (2020, June 30) retrieved 17 April 2024 from <https://phys.org/news/2020-06-epa-pollution-due-covid-august.html>

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