



State of California
Office of the Attorney General

XAVIER BECERRA
ATTORNEY GENERAL

April 9, 2020

Susan Parker Bodine
Asst. Administrator for Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Ave. N.W.
Washington, DC 20004

RE: Environmental Protection Agency's Temporary Policy Dated March 26, 2020 (COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program)

Dear Ms. Bodine:

I write as the chief law enforcement officer for the State of California¹, to express serious concerns with the broad-brush, retroactive policy announced by the Environmental Protection Agency (EPA) regarding noncompliance with existing legal obligations in its document entitled "COVID-19 Implications of EPA's Enforcement and Compliance Assurance" published on March 26, 2020 ("Noncompliance Policy").

Our nation faces an unprecedented public health crisis in the COVID-19 outbreak. During this time, it is more important than ever that public agencies continue their missions to protect the public health and safety of Americans, particularly the most vulnerable among us. According to the United States Centers for Disease Control and Prevention (CDC), COVID-19 presents a significantly higher risk to people with previous medical conditions such as asthma, conditions that are significantly exacerbated by increased industrial pollution.² The most recent evidence indicates that exposure to industrial pollution such as particulate matter significantly

¹ I submit this letter pursuant to my independent power and duty to protect the environment and natural resources of the State of California. See Cal. Const., art. V, § 13; Cal. Gov. Code, §§ 12511, 12600-12612; *D'Amico. v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 1415.

² Centers for Disease Control "People Who Are at Higher Risk for Severe Illness" available at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>; Preliminary Estimates of the Prevalence of Selected Underlying Health Conditions Among Patients with Coronavirus Disease 2019 — United States, February 12–March 28, 2020. MMWR Morb Mortal Wkly Rep 2020; 69: 382–386, available at: <http://dx.doi.org/10.15585/mmwr.mm6913e2>.



increases the likelihood of suffering serious health consequences, including death, from the COVID-19 virus.³ By giving wide berth for pollution to go unmeasured and unaccounted for during this critical time, the EPA's Noncompliance Policy will likely further endanger the public health and safety of communities exposed to that pollution and increase the likelihood that the most vulnerable Americans suffer the most serious consequences from the virus.

Furthermore, evidence is emerging that the rates of COVID-19 infection and death are disparately impacting racial minorities.⁴ One factor contributing to this disparate impact is minority communities' disproportionate exposure to poor air quality, including particulate matter.⁵ During this public health emergency, it is as important as ever that federal, state, and local agencies continue to work together to protect these minority communities from the ongoing pollution exposure that increases their likelihood of suffering serious health impacts, including death, from COVID-19. Instead, EPA's Noncompliance Policy absolving industrial polluters from existing environmental compliance obligations could exacerbate this historic racial disparity.

The types of "routine" environmental monitoring and reporting requirements that EPA's Noncompliance Policy invites or even encourages industry to forego (see Policy at 3, fns. 2-7) are essential for communities exposed to pollution to understand and mitigate the risks posed by releases of potentially hazardous air, water and other emissions. While the EPA explains that it adopted its Noncompliance Policy "to prioritize its resources to respond to acute risks and imminent threats" without focusing on "routine monitoring and reporting," it is this very monitoring and reporting that regularly identifies these acute and imminent threats EPA seeks to prioritize.

Further, EPA has not adequately explained the need for adopting many aspects of its retroactive Noncompliance Policy. While many industries are shut down due to the COVID-19 virus, many of the refineries, chemical plants, and other facilities subject to the Noncompliance

³ Wu & Nethery, "Exposure to air pollution and COVID-19 mortality in the United States," Dept. of Biostatistics, Harvard T.H. Chan School of Public Health, available at: https://projects.iq.harvard.edu/files/covid-pm/files/pm_and_covid_mortality.pdf. See also: <https://www.nytimes.com/2020/04/07/climate/air-pollution-coronavirus-covid.html>

⁴ "Black Americans face alarming rates of coronavirus infection in some states" *New York Times* (April 7, 2020), available at: <https://www.nytimes.com/2020/04/07/us/coronavirus-race.html>; "COVID-19 is having a devastating impact on African Americans" *Forbes* (April 4, 2020), available at: <https://www.forbes.com/sites/niallmccarthy/2020/04/07/covid-19-is-having-a-devastating-impact-on-african-americans-infographic/#2055624078fa>; "Indian Country, where residents suffer disproportionately from disease, is bracing for coronavirus" *Washington Post* (April 4, 2020), available at: <https://www.washingtonpost.com/climate-environment/2020/04/04/native-american-coronavirus/>.

⁵ Mikati et al., "Disparities in Distribution of Particulate Matter Emission Sources by Race and Poverty Status" *American Journal of Public Health*, Vol. 108, No. 4, 480-485 (April 2018).

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Policy are operational, and there is little evidence provided that existing monitoring and reporting requirements cannot be met. In addition, certain monitoring can be conducted and reported remotely without subjecting any employees to heightened risks from the virus. EPA's Noncompliance Policy is unnecessarily overbroad and lacking sufficient foundation.

Due to these concerns, I support the Petition for Emergency Rulemaking submitted on April 1, 2020, by a coalition of non-profit organizations regarding the need for more transparency over EPA's Noncompliance Policy.⁶ While certain flexibility may be necessary for monitoring and reporting, *at minimum* regulated entities must report noncompliance with mandatory environmental obligations to the EPA and the applicable state and regulatory authorities. These reports must also immediately be made publicly available so that the impacted communities can take necessary steps to mitigate the potential impacts from such noncompliance. I therefore back petitioners request to increase transparency and disclosure regarding industrial pollution that will go unmonitored and unreported pursuant to EPA's Noncompliance Policy.

Sincerely,

A handwritten signature in blue ink, appearing to read "Susan Parker Bodine", written over a horizontal dashed line.

California Attorney General

⁶ See Petition for Emergency Rulemaking before the Administrator of the United States Environmental Protection Agency (April 1, 2010), available at: <https://www.nrdc.org/sites/default/files/petition-emergency-rulemaking-20200401.pdf>.