

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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WASHINGTON, DC 20515-6143

MAJORITY (202) 225-5051

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<http://oversight.house.gov>

April 22, 2020

The Honorable Andrew Wheeler
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Dear Administrator Wheeler:

As we celebrate the 50th anniversary of Earth Day, our planet faces a rapidly changing climate that is a grave threat to all Americans and to people around the globe. Strong science-based leadership and environmental action by the federal government is needed now more than ever. However, the Environmental Protection Agency (EPA) appears to be abandoning this critical responsibility.

On March 26, 2020, the EPA announced it was suspending enforcement of environmental laws during the coronavirus pandemic. This unprecedented action sends a signal to polluters that they will not face any penalties for poisoning our air and water, which will put the health of Americans further at risk not only during the coronavirus crisis, but for years to come. While we appreciate the need for flexibility during this challenging time, the Administration appears to be taking advantage of a global pandemic to advance an anti-environment and anti-climate agenda.

Five days after suspending enforcement activities, EPA and the Department of Transportation announced a rollback of Obama-era clean car standards, with a recent draft establishing a new standard that would “lead to nearly a billion more tons of planet-warming carbon dioxide released and the consumption of about 80 billion more gallons of gasoline over the lifetime of the vehicles built during the terms of the rule.”¹ This is an abdication of EPA’s core mission and legal responsibility to protect human health and the environment.

Increased Exposure to Pollution and Negative Health Outcomes

EPA’s March 26, 2020 memorandum announced that during the coronavirus pandemic, it would be suspending environmental enforcement actions across all industries. The memo stated that if compliance with environmental laws “is not reasonably practicable,” companies should merely “[a]ct responsibly under the circumstances.” The memo also stated that “EPA does not

¹ *U.S. to Announce Rollback of Auto Pollution Rules, A Key Effort to Fight Climate Change*, New York Times (Mar. 30, 2020) (online at www.nytimes.com/2020/03/30/climate/trump-fuel-economy.html?auth=link-dismiss-google1tap).

expect to seek penalties for violations” when the agency “agrees that COVID-19 was the cause of the noncompliance” and that “EPA does not plan to ask facilities to ‘catch-up’ with missed monitoring or reporting” in many circumstances. EPA made the policy effective retroactive, beginning on March 13, 2020, and did not identify any end date.²

Former EPA officials and public health experts have voiced alarm over the agency’s decision to abandon its statutory enforcement obligations and have warned that this decision could exacerbate the spread of the coronavirus. For example, former EPA Administrator Gina McCarthy, now President and Chief Executive Officer of the Natural Resources Defense Council, stated:

This is an open license to pollute. The administration should be giving its all toward making our country healthier right now. Instead it is taking advantage of an unprecedented public health crisis to do favors for polluters that threaten public health.³

This suspension of enforcement actions likely will result in increased greenhouse gas emissions and particulate pollution, which can lead to lung inflammation and decreased lung capacity and functionality. Exposure to increased greenhouse gases and particulate pollution can also lead to an increasing number of emergency room visits and hospitalizations for asthma and higher overall risk of mortality.⁴ Betsy Southerland, a former EPA official who worked at the agency for over two decades, warned: “Air pollution leads to respiratory distress in downwind communities and respiratory distress in turn makes you more susceptible to the coronavirus.”⁵

The health conditions caused by pollution also include cardiovascular disease, diabetes, chronic respiratory disease, and hypertension, each of which may result in comorbidities that increase the mortality rates of people infected with the coronavirus.⁶

² Environmental Protection Agency, *Memorandum: COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program* (Mar. 26, 2020) (online at www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf).

³ Natural Resource Defense Council, *EPA Issues Unprecedented “License to Pollute” During Pandemic* (Mar. 27, 2020) (online at www.nrdc.org/experts/nrdc/epa-issues-unprecedented-license-pollute-during-pandemic).

⁴ Centers for Disease Control and Prevention and American Public Health Association, *Fact Sheet: Climate Change Decreases the Quality of the Air We Breathe* (online at www.cdc.gov/climateandhealth/pubs/AIR-QUALITY-Final_508.pdf); M. L. Bell et al., “Ozone and Short-Term Mortality in 95 US Urban Communities, 1987-2000,” *Journal of the American Medical Association* (Nov. 2004) (online at www.ncbi.nlm.nih.gov/pubmed/15547165).

⁵ *Trump’s Move to Suspend Enforcement of Environmental Laws is a Lifeline to the Oil Industry*, *Inside Climate News* (Mar. 27, 2020) (online at www.insideclimatenews.org/news/27032020/coronavirus-covid-19-EPA-API-environmental-enforcement).

⁶ *Johns Hopkins ABX Guide: Coronavirus COVID-19 (SARS-CoV-2)* Johns Hopkins Medicine (Mar. 27, 2020) (online at www.hopkinsguides.com/hopkins/view/Johns_Hopkins_ABX_Guide/540747/all/Coronavirus_COVID_19__SARS_CoV_2_).

Pneumonia is among the most common serious health consequences from coronavirus.⁷ Health experts have found a link between air pollution and pneumonia and have cautioned that “air pollution increases the chances that someone will get pneumonia, and if they get pneumonia, will be sicker with it.”⁸

Industry Influence on the Administration’s Decision-Making Process

Over the past year, the Subcommittee on Environment has found that, since taking office, President Trump and his Administration have sought to relax, roll back, or rescind regulations for the oil, gas, and coal industries.⁹ We are concerned about the outsized influence that the fossil fuel industry has over the Trump Administration’s regulatory and enforcement decisions and actions. Given the current coronavirus pandemic, these concerns are magnified.

It appears that the EPA has been lobbied by several industries, including the oil and gas industry, to suspend the enforcement of environmental regulations during the coronavirus pandemic.¹⁰

The American Petroleum Institute (API) wrote to ask President Trump and EPA to temporarily waive “non-essential compliance obligations” such as environmental record-keeping, training, and other non-safety requirements. In the letter, API also asked the President and EPA to waive seasonal fuel requirements, suspend inspections and audits, relax certain leasing and permitting considerations, and make other changes.¹¹ EPA issued its memorandum, which largely accedes to these requests, just three days later.¹²

⁷ *What Happens to People’s Lungs When They Get Coronavirus?* The Guardian (Mar. 28, 2020) (online at www.theguardian.com/world/2020/mar/28/what-happens-to-peoples-lungs-when-they-get-coronavirus).

⁸ *Does Air Pollution Make You More Susceptible to Coronavirus? California Won’t Like the Answer*, Los Angeles Times (Mar. 21, 2020) (online at www.latimes.com/california/story/2020-03-21/coronavirus-air-pollution-health-risk).

⁹ Committee on Oversight and Reform, Subcommittee on Environment, *Hearing on Trump’s Wrong Turn on Clean Cars: The Effects of Fuel Efficiency Rollbacks on the Climate, Car Companies and California* (Oct. 29, 2019) (online at <https://oversight.house.gov/legislation/hearings/trump-s-wrong-turn-on-clean-cars-the-effects-of-fuel-efficiency-rollbacks-on>); *see also* Committee on Oversight and Reform, Subcommittee on Environment, *Hearing on a Threat to America’s Children: The Trump Administration’s Proposal to Undermine Protections from Mercury Air Toxics Standards* (Feb. 6, 2020) (online at <https://oversight.house.gov/legislation/hearings/a-threat-to-america-s-children-the-trump-administration-s-proposal-to-undermine>).

¹⁰ *Citing Outbreak, EPA Has Stopped Enforcing Environmental Laws*, Public Broadcasting Service (Mar. 27, 2020) (online at www.pbs.org/newshour/economy/citing-outbreak-epa-has-stopped-enforcing-environmental-laws).

¹¹ Letter from Frank J. Macchiarola, American Petroleum Institute, to Andrew Wheeler, Administrator, Environmental Protection Agency (Mar. 23, 2020) (online at www.documentcloud.org/documents/6819817-API-Letter-to-EPA-Seeking-Oil-Industry.html).

¹² Environmental Protection Agency, *Memorandum: COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program* (Mar. 26, 2020) (online at www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf).

While we understand the vast financial impacts of the coronavirus pandemic on the U.S. economy, the ongoing health crisis is not an excuse to allow greater levels of harmful pollution and the resulting health risks. EPA's unprecedented enforcement suspension was unnecessary because the agency already has the discretion to waive penalties in cases of hardship.¹³ We urge the EPA to reverse this misguided and harmful decision that puts the lives of Americans at risk.

For these reasons, the Committee also requests a briefing by May 1, 2020, on the following topics:

1. The decision-making process that led to the March 26, 2020, announcement of a moratorium on EPA enforcement actions, including any outside organizations or individuals that provided input;
2. How the proposed moratorium on EPA enforcement is predicted to affect the environment and the health of Americans, including its impact on vulnerable communities; and
3. The anticipated date for the end of the moratorium and the factors that EPA will consider when making this decision.

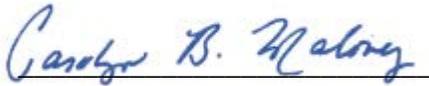
In addition, the Committee requests the following documents:

1. By May 6, 2020, all documents and communications from private industry representatives, including companies, corporations, and trade organizations regarding potential changes to EPA enforcement actions in relation to the coronavirus crisis from the period of February 26, 2020, the date of the first case of community transmission in the United States, to March 26, 2020; and
2. On a rolling basis as they are received or communicated to EPA, copies of all incidences of non-compliance by a regulated industry, which EPA has required each company to maintain through the crisis.

The Committee on Oversight and Reform is the principal oversight committee of the House of Representatives and has broad authority to investigate "any matter" at "any time" under House Rule X. An attachment to this letter provides additional instructions for responding to the Subcommittee's request. If you have any questions regarding this request, please contact Subcommittee staff at (202) 225-5051.

¹³ *Trump's Move to Suspend Enforcement of Environmental Laws is a Lifeline to the Oil Industry*, Inside Climate News (Mar. 27, 2020) (online at www.insideclimatenews.org/news/27032020/coronavirus-covid-19-EPA-API-environmental-enforcement).

Sincerely,



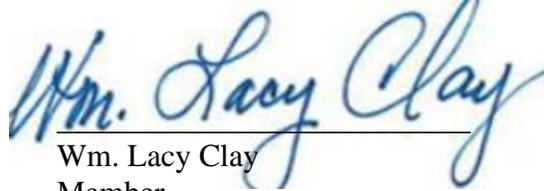
Carolyn B. Maloney
Chairwoman
Committee on Oversight and Reform



Harley Rouda
Chairman
Subcommittee on Environment



Eleanor Holmes Norton
Member



Wm. Lacy Clay
Member



Stephen F. Lynch
Member



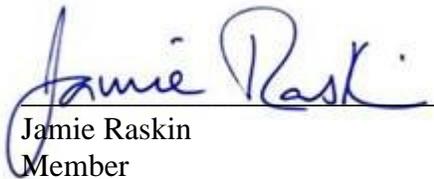
Jim Cooper
Member



Gerald E. Connolly
Member



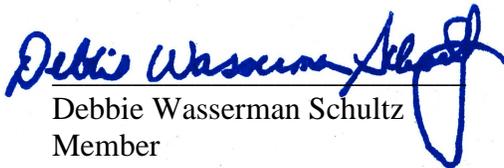
Raja Krishnamoorthi
Member



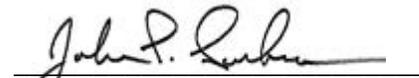
Jamie Raskin
Member



Ro Khanna
Member



Debbie Wasserman Schultz
Member



John P. Sarbanes
Member



Peter Welch
Member



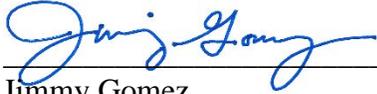
Jackie Speier
Member



Robin L. Kelly
Member



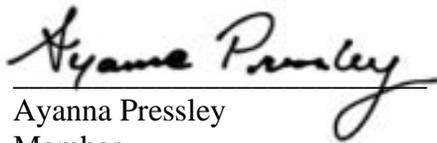
Brenda L. Lawrence
Member



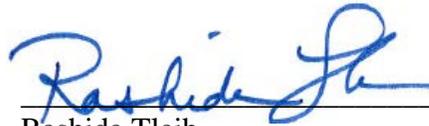
Jimmy Gomez
Member



Alexandria Ocasio-Cortez
Member



Ayanna Pressley
Member



Rashida Tlaib
Member



Katie Porter
Member



Deb Haaland
Member

Enclosure

cc: The Honorable Jim Jordan, Ranking Member

The Honorable James Comer, Ranking Member
Subcommittee on Environment

Responding to Committee Document Requests

1. In complying with this request, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. Produce all documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party.
2. Requested documents, and all documents reasonably related to the requested documents, should not be destroyed, altered, removed, transferred, or otherwise made inaccessible to the Committees.
3. In the event that any entity, organization, or individual denoted in this request is or has been known by any name other than that herein denoted, the request shall be read also to include that alternative identification.
4. The Committees' preference is to receive documents in electronic form (i.e., CD, memory stick, thumb drive, or secure file transfer) in lieu of paper productions.
5. Documents produced in electronic format should be organized, identified, and indexed electronically.
6. Electronic document productions should be prepared according to the following standards:
 - a. The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - b. Document numbers in the load file should match document Bates numbers and TIF file names.
 - c. If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - d. All electronic documents produced to the Committees should include the following fields of metadata specific to each document, and no modifications should be made to the original metadata:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD,

INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION,
BEGATTACH.

7. Documents produced to the Committees should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, zip file, box, or folder is produced, each should contain an index describing its contents.
8. Documents produced in response to this request shall be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the request was served.
9. When you produce documents, you should identify the paragraph(s) or request(s) in the Committees' letter to which the documents respond.
10. The fact that any other person or entity also possesses non-identical or identical copies of the same documents shall not be a basis to withhold any information.
11. The pendency of or potential for litigation shall not be a basis to withhold any information.
12. In accordance with 5 U.S.C. § 552(d), the Freedom of Information Act (FOIA) and any statutory exemptions to FOIA shall not be a basis for withholding any information.
13. Pursuant to 5 U.S.C. § 552a(b)(9), the Privacy Act shall not be a basis for withholding information.
14. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
15. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) every privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author, addressee, and any other recipient(s); (e) the relationship of the author and addressee to each other; and (f) the basis for the privilege(s) asserted.
16. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (by date, author, subject, and recipients), and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, produce all documents that would be responsive as if the date or other descriptive detail were correct.

18. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data, or information not produced because it has not been located or discovered by the return date shall be produced immediately upon subsequent location or discovery.
19. All documents shall be Bates-stamped sequentially and produced sequentially.
20. Two sets of each production shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee on Oversight and Reform, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2105 of the Rayburn House Office Building. When documents are produced to the Committee on Financial Services, production sets shall be delivered to the Majority Staff in Room 2129 of the Rayburn House Office Building and the Minority Staff in Room 4340 of the O'Neill House Office Building. When documents are produced to the Permanent Select Committee on Intelligence, production sets shall be delivered to Majority and Minority Staff in Room HVC-304 of the Capital Visitor Center.
21. Upon completion of the production, submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, data, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone call, meeting or other inter-office or intra-office communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape, or otherwise. A document bearing any notation not a

part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, mail, releases, electronic message including email (desktop or mobile device), text message, instant message, MMS or SMS message, message application, or otherwise.
3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information that might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neutral genders.
4. The term “including” shall be construed broadly to mean “including, but not limited to.”
5. The term “Company” means the named legal entity as well as any units, firms, partnerships, associations, corporations, limited liability companies, trusts, subsidiaries, affiliates, divisions, departments, branches, joint ventures, proprietorships, syndicates, or other legal, business or government entities over which the named legal entity exercises control or in which the named entity has any ownership whatsoever.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual’s complete name and title; (b) the individual’s business or personal address and phone number; and (c) any and all known aliases.
7. The term “related to” or “referring or relating to,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
8. The term “employee” means any past or present agent, borrowed employee, casual employee, consultant, contractor, de facto employee, detailee, fellow, independent contractor, intern, joint adventurer, loaned employee, officer, part-time employee, permanent employee, provisional employee, special government employee, subcontractor, or any other type of service provider.
9. The term “individual” means all natural persons and all persons or entities acting on their behalf.