

United States Senate
WASHINGTON, DC 20510

June 17, 2020

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency (EPA)
1301 Constitution Ave. NW
Washington, DC 20460

Dear Administrator Wheeler:

I write to follow up the dialogue we began last month during a hearing held in the Environment and Public Works (EPW) Committee on May 20, 2020. During the hearing I shared my concerns with you over the alarming impact the U.S. Environmental Protection Agency's (EPA) nonenforcement policy has had during the COVID-19 pandemic. Additionally, I am worried about EPA's decision to begin reopening offices this month, and I am concerned that those plans are inconsistent with the Centers for Disease Control and Prevention's (CDC) guidelines. I write to request several clarifications on your statements during that hearing as well as seek information on EPA's plan to reopen.

On March 26, 2020 EPA adopted a nonenforcement policy in response to the COVID-19 Pandemic and concerns that EPA civil servants would be unable to inspect facilities when, like many Americans, they had been instructed to shelter in place. I am concerned that EPA has not required companies to provide an explanation for why they are unable to fulfil their compliance obligations at this time, which I believe could lead to unnecessary public health harm in the communities in which they operate.

When I raised this concern to you, you stated that the companies "will eventually have to" provide information on their compliance to EPA regulations. However, the EPA's nonenforcement policy states, "if reporting is not reasonably practicable due to COVID-19, regulated entities should maintain this information internally and make it available to the EPA or an authorized state or tribe upon request." Simply put, under EPA's policy, companies are not required to affirmatively submit this information to the EPA. Further, EPA does not appear to be planning to request this information, as the policy also states, "in general, absent exigent circumstances, the EPA does not plan to ask facilities to "catch-up" with missed monitoring or reporting if the underlying requirement applies to intervals of less than three months." These observations from your Agency's guidance contradict the statements you made to me during our hearing.

Additionally, during the EPW hearing, you claimed that the nonenforcement policy only effects the "routine reporting" requirement. The text of the policy states that "the EPA does not expect to seek penalties for violations of routine compliance monitoring... obligations," including "fence line monitoring" and "LDAR," which detect and address abnormal emissions. If those compliance measures are foregone, abnormal emissions will not be detected and therefore will not be addressed.

I also am concerned with your recent decision to start reopening offices in EPA regions 1, 3, 4, 5, 6, 7, 8 and 10. As more and more businesses and offices reopen, steps need to be taken to guarantee the safety and health of employees. EPA's decision to reopen despite failing CDC recommendations for how to create a safe environment during COVID-19 is alarming. The reopening raises questions about how seriously you are taking the health of EPA employees during this national crisis.

In light of your comments and EPA's guidance, I ask that you provide complete answers in writing to the following questions:

1. Moving forward and for the duration of the COVID-19 Pandemic, will you commit to requiring companies to disclose noncompliance and its basis to Congress and the public?
2. Will you direct EPA to requests catch up reports from facilities for the period that has lapsed from March 26, 2020 to today?
3. Please provide the guidance or internal memos EPA has shared with senior leadership to prepare for a reopening.
4. Please provide the data related to a two-week decline in COVID-19 cases for the communities in which EPA offices are located, as consistent with the April 2020 guidance from Office of Management and Budget, as well as the Office of Personnel Management recommending a continuation of maximum telework for employees until the surrounding community has a two-week decline in COVID-19 cases and can ensure local hospital capacity.
5. What access will employees have to personal protective equipment, cleaning supplies and workplace dividers?
6. What steps are being taken so employees can safely maintain the 6 foot social distance recommended by the CDC?
7. What are your protocols for employees who test positive for the virus?
8. What steps are being taken to accommodate employees with childcare responsibilities at home?
9. What steps are being taken to accommodate employees who rely on public transportation that may have service interrupted or are being run adjusted schedules?

To date, over 110,000 Americans have died from COVID-19 and that number continues to grow. Environmental justice communities are at a higher risk of hospitalizations and death due to COVID-19, in part because of underlying conditions like asthma caused by the pollution in their neighborhoods. To allow pollution to worsen during a respiratory pandemic in these vulnerable communities is unacceptable and that is why your clarification and swift action is critically important. However, even as EPA takes action to protect vulnerable communities, it is essential

to protect the health of EPA staff, especially due to the fact that as of April, more than 40 EPA employees were tested positive with COVID-19 and one has died.

Thank you in advance for your consideration of my request.

Sincerely,



Tammy Duckworth
United States Senator