

JUNE 2020

EPA's COVID-19 Temporary Enforcement Policy Under Attack by Coalitions of Environmental Conservation Groups and States

Cathleen M. Devlin | Melissa A. Clarke

Three environmental conservation groups have announced plans to sue the U.S. Environmental Protection Agency (EPA) in response to EPA's issuance of its [March 26, 2020 Temporary Policy Memo](#), which modified the agency's enforcement discretion in light of the sweeping impact of the COVID-19 pandemic in the United States ("Temporary Enforcement Policy").

The Center for Biological Diversity, Waterkeeper Alliance Inc. and Riverkeeper Inc. contend that EPA's Temporary Enforcement Policy enables polluting industries, including oil and gas companies, to shirk their obligations to comply with monitoring and reporting requirements under the Clean Water Act, Clean Air Act, Safe Drinking Water Act, and other laws. The environmental groups also argue that EPA is violating the Endangered Species Act by failing to ensure that the Temporary Enforcement Policy does not put threatened and endangered species at risk nationwide.

The anticipated legal action by these conservation groups is the latest in a barrage of suits challenging EPA's Temporary Enforcement Policy. On April 16, 2020, a coalition of 14 environmental justice, public health and public interest organizations led by the Natural Resources Defense Council filed suit against EPA in federal court in New York. In their [Complaint](#), these groups argue that the lives of citizens who live in "downstream, downwind and fence-line communities" near industrial facilities are being put in danger, both by increased pollution levels and by the reduced amount of emissions information available to the public.

Additionally, on May 13, 2020, a coalition of nine states' attorneys general in New York, California, Illinois, Maryland, Michigan, Minnesota, Oregon, Virginia and Vermont sued EPA in New York federal court, claiming that the Temporary Enforcement Policy exploits the COVID-19 crisis by tolerating industrial pollution at a time when citizens with existing respiratory and cardiovascular issues are at heightened risk. The states' [Complaint](#) alleges that it was "arbitrary and capricious for EPA to adopt a broad ranging policy without considering whether it will exacerbate harms to public health during the current crisis," and proclaims that EPA's "non-enforcement policy" represents "an abdication of EPA's responsibilities promulgated without notice or comment."

This alert was written by Cathleen M. Devlin, Co-Chair of the Firm's Environmental Practice, and Melissa A. Clarke, a member of the Practice. Cathleen can be reached at (215) 972-8562 or at Cathleen.Devlin@saul.com. Melissa can be reached at (609) 452-3142 or at Melissa.Clarke@saul.com. This publication has been prepared for information purposes only.

Did you find this information useful? Please provide your feedback [here](#) and also let us know if there are other legal topics of interest to you.

The provision and receipt of the information in this publication (a) should not be considered legal advice, (b) does not create a lawyer-client relationship, and (c) should not be acted on without seeking professional counsel who have been informed of the specific facts. Under the rules of certain jurisdictions, this communication may constitute "Attorney Advertising."