

EPN “All Hands” Call, Friday, April 17, 2020

This month's all-hands call discussed EPA relaxing enforcement during the pandemic and its health implications.

EPA Relaxing Enforcement Measures

Cynthia Giles and Mustafa Ali led a conversation on EPA's suspension of its rules and its effects on vulnerable populations.

In the wake of the COVID-19 pandemic, EPA issued a [memo](#) suspending enforcement actions where companies claimed violations were the result of COVID-19. The non-enforcement policy specifically includes monitoring and reporting as violations EPA expects companies to have. If a company does not monitor, we may never know how much pollution they emitted. This sweeping measure was catalyzed by a letter from the American Petroleum Institute (API), which requested a “No Action Assurance” for most if not all EPA regulations. EPA responded by not only granting API its request but also extending it to all companies nationwide. The memo has no end date. No Action Assurances typically have an end date.

EPA's written policy against No Action Assurances was issued in 1984. A No Action Assurance allows a company to admit it is in violation and seek EPA's commitment not to enforce the rules. No Action Assurances are uncommon and issued for only two reasons: Extremely unusual circumstances (e.g., following a natural disaster) when necessary to serve the public interest, or when relief is expressly provided in statute—such as fuel waivers laid out in the 2005 Energy Law.

As part of the suspension, EPA is allowing companies to decide when it is not practical to comply with its monitoring and reporting. The agency has instructed polluters to keep a record of what those reasons are at their facilities. Administrator Wheeler also committed to industry that they will receive a 7-day notice prior to the No Action Assurance being lifted.

EPA's enforcement relaxation will have far-reaching consequences, but none so apparent as its effects on the nation's minority and underserved communities. Minority and underserved communities, which already lack essential medical services and are subject to higher levels of pollution, will be the ones who suffer the most from the additional pollution under EPA's suspension. People in these communities with chronic and pre-existing conditions such as heart disease and asthma will be put at greater risk due to EPA's decision.

Health Implications of EPA's Enforcement Suspension

Dr. Bernard Goldstein gave a presentation on the health consequences of EPA's pollution control work (and the potential suspension of its rules) as it relates to the COVID-19 pandemic.

EPA's enforcement suspension may increase the pollution those in highly dense populations face. The links between air pollution and COVID-19 mortality are becoming more apparent; additional pollution can inhibit people's ability to counteract the virus. Each person's capacity to withstand the virus depends on various factors including

occupational exposure to air pollutants, pre-existing conditions (asthma, COPD, heart disease), and the normal aging process. Those who need to decide between their health and safety and earning a living will face more complicated decisions based on their prior exposure to air pollutants.

Pollutants such as particulate matter and ozone have contributed to the underlying conditions that erode the reserve functions of the most vulnerable. People/communities with historically lower lung function and/or exposure to higher pollution, are now even more vulnerable to harm from additional pollutants due to lack of enforcement. This increases their chances of succumbing to COVID-19.

Presenters

Cynthia Giles previously served as the Assistant Administrator, EPA Office of Enforcement and Compliance Assurance from 2009-2017.

Mustafa Ali is the Senior Vice President for Environmental Justice, National Wildlife Federation. He previously served as the Senior Advisor for Environmental Justice and Community Revitalization and Assistant Associate Administrator for Environmental Justice at EPA.

Dr. Bernard Goldstein, MD is a Professor Emeritus and Dean Emeritus, University of Pittsburgh Graduate School of Public Health. He was previously the Clean Air Science Advisory Committee Chair and the EPA Assistant Administrator for Research and Development.