

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

NATURAL RESOURCES DEFENSE COUNCIL,  
ENVIRONMENTAL JUSTICE HEALTH ALLIANCE, PUBLIC  
CITIZEN, CATSKILL MOUNTAINKEEPER, CENTER FOR  
COALFIELD JUSTICE, CLEAN WATER ACTION, COMING  
CLEAN, FLINT RISING, INDIGENOUS ENVIRONMENTAL  
NETWORK, JUST TRANSITION ALLIANCE, LOS  
JARDINES INSTITUTE, SOUTHEAST ENVIRONMENTAL  
TASK FORCE, TEXAS ENVIRONMENTAL JUSTICE  
ADVOCACY SERVICES, WATER YOU FIGHTING FOR,  
WEST HARLEM ENVIRONMENTAL ACTION, INC.,

Plaintiffs,

v.

ASSISTANT ADMINISTRATOR SUSAN PARKER BODINE,  
ADMINISTRATOR ANDREW WHEELER, UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY,

Defendants.

No. 20 Civ. 3058 (CM)

**DECLARATION OF LAWRENCE E. STARFIELD**

I, Lawrence E. Starfield, state the following:

1. I declare that the following statements are true and correct to the best of my knowledge and belief and are based upon my personal knowledge and/or my review of information contained in the records of the United States Environmental Protection Agency (“EPA” or the “Agency”) or supplied by current employees.

2. I am the Principal Deputy Assistant Administrator of EPA’s Office of Enforcement and Compliance Assurance (OECA). I serve as the senior career official for OECA responsible for managing the day to day operations of the nation’s environmental enforcement program. From 2001 to 2011, I served as the Deputy Regional Administrator for the EPA Region

6, in Dallas, Texas. From 1997-2001, I was the Regional Counsel for Region 6. Before joining Region 6, I worked for ten years with EPA's Office of General Counsel in Washington, D.C., where I served as an attorney-advisor, Assistant General Counsel for RCRA, and Acting Associate General Counsel for Solid Waste and Emergency Response. I am a graduate of Wesleyan University in Connecticut, and Yale Law School.

3. I am making this Declaration in support of EPA's opposition to Plaintiffs' Motion for Summary Judgment and in support of its Cross-Motion for Summary Judgment filed in the above captioned case.

4. The Office of Enforcement and Compliance Assurance addresses pollution problems that impact American communities through vigorous civil and criminal enforcement. Our enforcement activities target the most serious water, air and chemical hazards. OECA is building on our relationship with states and tribal partners to make sure we are delivering on our shared commitment to a clean and healthy environment. OECA works with EPA regional offices, and in partnership with state and tribal governments, and other federal agencies to enforce the nation's environmental laws. In addition to the Office of the Assistant Administrator, OECA is comprised of the following Offices: Office of Civil Enforcement, Office of Criminal Enforcement, Forensics and Training, Office of Compliance, Office of Site Remediation Enforcement, Federal Facilities Enforcement Office, and Office of Administration and Policy.

5. There are over 1,100,000 facilities that have environmental responsibilities and are identified as active facilities in EPA's Enforcement and Compliance History Online (ECHO) database.

6. Beginning in early March, EPA began receiving inquires and questions from both state regulators and the regulated community about how to handle the current extraordinary

situation where stay at home and social distancing orders imposed by state and local governments and the increasing numbers of people infected with COVID-19 has led to worker shortages, has impacted both the availability of contractors to conduct sampling and testing for facilities, and has impacted the ability of laboratories to timely analyze samples and provide results. As an example, between March 16 and March 24, the EPA received correspondence from a number of trade associations representing hundreds of regulated entities, including the Fertilizer Institute; Portland Cement Association; American Chemistry Council; National Waste and Recycling Association; National Cattlemen's Beef Association; National Pork Producers Council; U.S. Poultry & Egg Association; National Milk Producers Federation; United Egg Producers; National Council of Farmer Cooperative; the American Farm Bureau Federation; Phillips 66; American Petroleum Institute; and the Hearth, Patio & Barbeque Association. Regions were also receiving inquiries, particularly from state co-regulators. OECA senior management started weekly calls with Regional enforcement senior managers on March 18, 2020. EPA's Office of Intergovernmental Relations also received a number of questions from states, as well as the Environmental Council of States (ECOS).

7. On March 26, 2020, the Assistant Administrator for OECA, Susan Parker Bodine, issued a memorandum titled "COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program," which set forth the Agency's temporary enforcement policy ("Policy") covering potential noncompliance resulting from the COVID-19 public health crisis.

8. EPA developed the Policy cognizant of potential worker shortages due to the COVID-19 public health crisis as well as the travel and social distancing restrictions imposed by both governments and corporations or recommended by the Centers for Disease Control and Prevention (CDC) to limit the spread of COVID-19.

9. The Policy recognizes that authorized states or tribes may take a different approach under their own authorities. The vast majority of states have issued statements or policies regarding environmental enforcement during the COVID-19 public health emergency. As may be appropriate and manageable given the number of regulated entities in a single state compared to the entire United States, some state policies include reporting requirements that provide the information sought by the petition.

10. The Policy does not waive or change any environmental requirements. It does not excuse exceedances of pollutant limitations in permits, regulations, and statutes. Regulated entities are expected to make every effort to comply with their environmental obligations. The Policy merely recognizes that in some instances, compliance may not be reasonably practicable due to the impacts of the COVID-19 public health emergency, and indicates how EPA may exercise its enforcement discretion in response to those violations.

11. In the Policy, EPA indicates that it will not seek penalties for noncompliance with *routine* compliance monitoring and reporting requirements, only if, on a case-by-case basis, EPA agrees that such noncompliance was caused by the COVID-19 public health crisis. Regulated parties need to document the basis for any claim that the pandemic prevented them from conducting that routine compliance monitoring and reporting and present it to EPA upon request.

12. Section I.B. of the Policy addresses “routine compliance monitoring and reporting” that often is required by a permit, statute or regulation. The Policy describes a few examples to illustrate the types of routine reporting obligations that may be impacted due to the unavailability of employees or contractors because they cannot travel, are subject to stay-at-home orders, etc., as a result of the COVID-19 public health emergency. Section I.B. of the

Policy does not apply to one-time reporting, intermittent reporting (e.g., in response to an event or incident), or any other type of reporting other than on a regular and routine basis. Emergency reporting is also specifically excluded from the Policy under Section IV. (“Accidental Releases”). Note also that reporting required by a civil judicial consent decree or administrative settlement that may be impacted by the COVID-19 public health emergency is not considered “routine” under the Policy and instead is covered by Section I.C. (“Settlement agreement and consent decree reporting obligations and milestones”), and not Section I.B.

13. The Policy specifically states that entities should use existing procedures to report noncompliance, as found in an applicable permit, regulation, or statute. However, where no such procedure is applicable, or if reporting is not reasonably practicable due to COVID-19, then regulated entities should nevertheless maintain this information internally and make it available to the EPA or an authorized state or tribe upon request.

14. In the Policy, EPA states that facilities should contact the appropriate EPA region, authorized state, tribe, or territory if (i) facility operations impacted by the COVID-19 public health emergency may create an acute risk or an imminent threat to human health or the environment, or (ii) a facility suffers from failure of air emission control or wastewater or waste treatment systems or other facility equipment that may result in exceedances of enforceable limitations on emissions to air or discharges to water, or land disposal, or other unauthorized releases. If a facility fails to contact a regulator in these circumstances, the offer in the Policy to consider COVID-19 circumstances when determining an appropriate enforcement response does not apply.

15. Importantly, the overall message of the Policy is that regulated entities should make every effort to comply with their environmental and public health obligations, and to

contact the implementing agency for any circumstance in which there may be an acute risk/imminent threat to human health or the environment, or equipment failure that may result in exceedances. While Section I.B. of the Policy generally addresses noncompliance with routine compliance monitoring and reporting, Section I.D.1. addresses *any* noncompliance that may create an acute risk or an imminent threat to human health and the environment, while Section I.D.2. addresses *any* noncompliance of equipment that may result in an exceedance. Thus, a regulated entity should contact the implementing agency for *any* noncompliance that may create an acute risk/imminent threat, or equipment failure that may result in exceedances, including failure to undertake routine compliance monitoring. The overall goal is to minimize, and prevent to the extent possible, threats to human health and the environment that may result from noncompliance.

16. Recognizing that “heightened responsibility” of public water systems to provide safe drinking water, the Agency expects such systems to continue normal operations, maintenance, and sampling, and specifically states that the Policy does not extend enforcement discretion to public water systems. Monitoring and sampling by public water systems is not covered by Section I.B. of the Policy. Only Section I.E. of the Policy applies to public water systems.

17. OECA continues to provide targeted guidance relating to the Policy as well as other COVID-19 compliance issues.

- a. On March 31, 2020, the Office of Compliance in OECA issued the “Temporary Advisory for National Pollutant Discharge Elimination System (NPDES) Reporting in Response to COVID-19 Pandemic.”

- b. In early April, OECA launched the “[COVID-19 Enforcement and Compliance Resources](#)” webpage. Since early April, OECA has posted over two dozen “Frequently Asked Questions” about the Policy on the webpage.
- c. On April 10, 2020, OECA co-signed a memorandum with the Office of Land and Emergency Management entitled “[Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19;](#)” and
- d. On May 18, 2020, OECA CO-signed a memorandum with OLEM entitled “[COVID-19 Implications for Signing Paper Hazardous Waste Manifests.](#)”

18. During the COVID-19 public health emergency, EPA has continued to actively enforce and ensure compliance with the Nation’s environmental laws, to the extent possible. There is no pause on the work we do to address noncompliance. We continue to ensure that regulated entities are meeting their legal requirements while at the same time protecting our employees by following CDC and other applicable guidelines.

19. Specifically, EPA is prioritizing its resources to respond to acute risks and imminent threats and continuing its compliance monitoring and case development work to ensure that facilities in violation promptly return to compliance.

20. For example, we have increased our FIFRA enforcement work to fight against the sale of products that falsely claim to be effective against coronavirus, including:

- a. Issuing Stop Sale and Cease and Desist Orders and warning letters;
- b. Working closely with Customs and Border Patrol to prevent the importation of more than 10,000 illegal products; and
- c. Issuing Advisories to 26 companies for selling (or offering for sale) pesticide products and devices making COVID-19 claims. Nine of these letters were

sent to technology companies to advise them that dealers are using their online marketplace platforms to sell such products.

21. EPA enforcement is acting to ensure that people have safe drinking water.
  - a. On March 27, 2020, EPA's Region 4 office issued an Emergency Administrative Order under section 1431 of the Safe Drinking Water Act to the City of Jackson, Mississippi.
  - b. On April 22, 2020, EPA's Region 8 office issued an Emergency Administrative Order under section 1431 of the Safe Drinking Water Act to the Bureau of Indian Affairs, pertaining to the Crow Agency Public Water System on the Crow Indian Reservation in Montana.
  - c. On May 20, 2020, EPA's Region 7 office issued an Emergency Administrative Order under section 1431 of the Safe Drinking Water Act to Ozark County, Missouri.
  
22. EPA also has continued strong enforcement across the board. Between March 16, 2020, and early May 2020, EPA:
  - a. Opened 52 criminal enforcement cases (more criminal enforcement cases during the COVID-19 emergency than during the first two months of 2020);
  - b. Charged 10 defendants for criminal violations;
  - c. Concluded 122 civil enforcement actions;
  - d. Initiated 115 civil enforcement actions;
  - e. Secured \$21.5 million in Superfund response commitments;
  - f. Billed more than \$20 million in Superfund oversight costs; and



- g. Obtained commitments from parties to clean up 68,000 cubic yards of contaminated soil and water.

23. On April 1, 2020, EPA received Plaintiffs' Petition for Emergency Rulemaking (the "petition"). The petition requests that, within 7 days of receipt of the petition, EPA issue a final, enforceable rule imposing new reporting requirements on any regulated entity that fails to comply with any routine compliance monitoring or reporting requirement discussed in Section I.B. of the Policy and the creation of a new searchable public database for EPA to publish any such notification. The petition requests EPA to issue the emergency rule without prior notice and comment under the authority of at least five separate statutes: Clean Water Act (CWA) 33 U.S.C. § 1318(a), Clean Air Act (CAA), 42 U.S.C. § 7414(a)(1); Safe Drinking Water Act (SDWA), 42 U.S.C. § 300j-4(a)(1)(A); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6927(a); and Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11048.

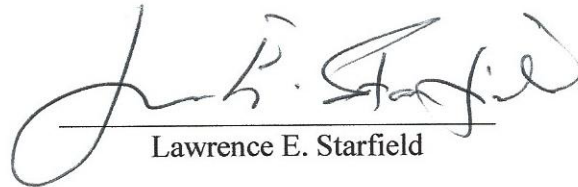
24. Because the petition was issued in response to the Policy, it was assigned to OECA for initial review. Based on the cross-media nature of the rulemaking requested in the petition and the various statutes implicated by such a rulemaking, OECA circulated the petition to the Offices of Water, Air and Radiation, Land and Emergency Management and Chemical Safety and Pollution Prevention for review.

25. The Administrator subsequently designated the Office of Air and Radiation to lead an assessment of the Agencywide effort needed to conduct the rulemakings requested by the petition as part of the Agency's review of the petition.

26. In parallel with that effort, OECA is assessing the potential impact of the petition on its enforcement discretion and whether the petition seeks to impermissibly limit such discretion.

In accordance with 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 29th day of May 2020.



Lawrence E. Starfield