

United States Senate

April 1, 2020

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

Dear Administrator Wheeler:

We write to request information about how EPA is adjusting its operations in light of the novel coronavirus, including as required by the Acting OMB Director's memorandum issued on March 17, 2020.¹ That memorandum requires federal agencies to "take appropriate steps to prioritize all resources to slow the transmission of COVID-19, while ensuring our mission-critical activities continue," including taking steps to "immediately adjust operations and services to minimize face-to-face interactions."

EPA is taking several steps in response to COVID-19, such as publishing its list of approved disinfectants² and expediting claims for EPA-registered surface disinfectants that have been demonstrated to work on other similar viruses. However, EPA's Continuity of Operations Plan (COOP) is not publicly available. EPA also seems to have archived its 2016 pandemic influenza website.³ Lack of access to this information raises questions as to whether EPA's essential functions and response role remain intact in the current COVID-19 pandemic and whether the COOP plan is sufficient to address the current situation. Additionally, early reports about EPA's activities during and in response to the pandemic also raise several concerns:

- **Enforcement Discretion.** A March 24th article in the Wall Street Journal reported on EPA plans "to waive compliance requirements and deadlines for a range of industries, including oil refiners, water utilities and sewage plants, as it seeks to help businesses affected by the coronavirus pandemic."⁴ Other sources have also told Senator Carper's office that EPA appears ready to issue sweeping waivers of enforcement known as "no action assurances." Sources have also indicated that EPA issued interim inspection guidelines on March 18th that appropriately instruct staff to postpone any routine or non-time-critical inspections in order to prevent further spread of COVID-19. EPA's March 26th publication of a COVID-19 temporary enforcement discretion policy⁵ does provide a transparent description of EPA's enforcement efforts, and we appreciate the policy's express commitments that EPA will update the policy if it determines that modifications are necessary and post any such modifications on its website at least seven days prior to terminating the temporary policy. However, EPA must balance any relaxation in enforcement efforts taken to prevent the transmission of COVID-19 with its important mission to

¹ Memorandum from Russell T. Vought, Acting Director, Office of Management and Budget, *Federal Agency Operational Alignment to Slow the Spread of Coronavirus COVID-19*

² <https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2>

³ <https://archive.epa.gov/flu/web/html/index.html>

⁴ See [EPA Plans to Waive Some Compliance Requirements Amid Coronavirus Crisis](#), Wall Street Journal (March 24, 2020).

⁵ <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>

assure compliance with environmental laws and regulations, and must not allow enforcement discretion to be used as a license to pollute freely. EPA must also ensure that these measures are taken only as necessary, and with full transparency.

- **Public Comment.** EPA also appears to be moving forward with controversial rulemakings and other activities, often in a manner that does not allow for meaningful public input to be provided. For example, despite calls for delay, EPA insisted⁶ on completing the peer review process for the controversial⁷ Toxic Substances Control Act risk evaluation of the toxic chemical trichloroethylene (TCE) with a short written comment period and an online ‘public meeting’⁸ at a time when reviewers and other stakeholders may be either quarantined or, in some cases, responding to the COVID-19 crisis as members of the public health community. At the same time, EPA is rushing to finalize many of its more controversial rules to weaken pollution standards for automobiles and power plants. According to a March 25th article in The New York Times,⁹ federal workers describe the deregulatory atmosphere at EPA as relentless, with several workers being told to expect no “slippage” or relaxation of rulemaking deadlines even though thousands of federal employees are teleworking and juggling child care responsibilities.
- **Telework and Employee Protection.** EPA does not appear to have long-term plans to adequately protect its employees. Senator Carper’s office has learned that on March 15, 2020, you “authorized voluntary unscheduled leave and telework for all EPA employees across the nation” through April 3, 2020. However, press reports¹⁰ have also stated that on February 27, 2020, EPA issued an order (effective March 15, 2020) that *eliminates* the option of full-time regular telework for all non-bargaining unit employees (*i.e.*, supervisors and other senior-level employees).¹¹ Sources also indicate that at least as of March 24th, EPA had not implemented its Continuity of Operations Plan (COOP) for DC-area employees because the governments of Maryland, Virginia, and the District of Columbia had not yet issued formal shelter-in-place or stay-at-home orders. As a result, sources have said that they were told during a March 24th conference call that EPA employees (at least in the DC area) would be required to return to work after April 3rd unless you extended your March 15th telework and unscheduled leave flexibility or unless required to do so by local area governments. On March 30, 2020, the governments of Maryland, Virginia, and the District of Columbia issued stay-at-home orders. My office has obtained a copy of a March 30th email from you to EPA staff informing them that “In response to the President’s announcement yesterday to continue social distancing through April 30th, we will extend unscheduled leave and unscheduled telework in the Agency to the end of April. We are also evaluating options to provide as much flexibility to you as possible so that you can balance work and family responsibilities.” We urge you to promptly develop a plan to adequately protect EPA staff beyond April 30th.

EPA’s mission to protect human health and the environment requires a wide range of tasks, including monitoring air and water quality, cleaning up Superfund sites, ensuring that drinking water is safe, keeping harmful chemical products out of commerce, making sure that pesticides are used safely, and conducting research. The regulated community also relies upon EPA to approve, certify, permit, or

⁶ <https://www.revealnews.org/article/epa-science-panel-plows-ahead-with-toxic-chemicals-review-despite-coronavirus-crisis/>

⁷ <http://blogs.edf.org/health/2020/03/19/epas-draft-risk-evaluation-of-trichloroethylene-contains-major-scientific-flaws-that-understate-the-chemicals-risk-and-demand-robust-review/>

⁸ <https://www.epa.gov/tsca-peer-review/peer-review-draft-risk-evaluation-trichloroethylene-tce>

⁹ *Coronavirus Doesn’t Slow Trump’s Regulatory Rollbacks*, New York Times (March 25, 2020).

¹⁰ See e.g., *Policy to limit telework emerges during pandemic*, E&E News (March 23, 2020).

¹¹ https://www.eenews.net/assets/2020/03/23/document_gw_01.pdf

otherwise authorize many important commercial activities, such as approving disinfectants, evaluating the safety of new and existing chemicals, issuing air, water, and hazardous waste permits, certifying vehicles and engines for entry into commerce, and approving Energy Star products. It accomplishes its regulatory tasks in part via on-site visits, sampling, laboratory testing, inspections, public meetings, negotiations, and other activities that necessarily and appropriately will be severely limited for weeks or months while many EPA employees are teleworking or limiting contact with others. Even though some of these in-person activities can be converted to telephonic or online meetings, EPA's efforts may be hampered given that nongovernmental organizations, the regulated community, and EPA's state partners could be short-staffed and similarly focused on other tasks for many weeks or longer. So that we can better understand how EPA plans to perform its important mission while protecting its employees against the spread of COVID-19, we ask that you provide the following:

1. A copy of EPA's current Continuity of Operations Plan (COOP), pandemic plan, and other plans or documents that are guiding the Agency's operations in light of COVID-19, including a description of how such documents are being utilized or modified to address this unique situation.
2. A list of mission-critical functions that EPA is prioritizing for action pursuant to OMB's Operational Alignment memorandum issued on March 17, 2020,¹² and a description as to how EPA expects each such function to change and the timelines for such changes.
3. A description of how EPA is ensuring the health and safety of its staff, including how long the March 15th temporary pandemic telework policy is expected to last, whether you are considering changes to EPA's permanent telework policies, and the timing and details of any such changes.
4. A description of the criteria EPA is using or will use to make decisions on what type of enforcement obligations it may relax or otherwise modify as a result of the pandemic, including any changes to EPA's temporary enforcement discretion policy issued on March 26, 2020.¹³
5. An indication of whether you can commit to:
 - a. Publish on EPA's website copies of any documents issued since March 1, 2020 (and within 48 hours of issuance going forward) modifying existing environmental compliance obligations, including revised inspection policies or guidance, issuance of fuel waivers, no action assurances, *force majeure* determinations, imminent and substantial endangerment findings or orders, other administrative orders, judicial consent decrees, response guidance, interpretive documents, or any other planned or anticipated future modifications to existing environmental obligations. If not, why not?
 - b. Publish on EPA's website copies any documents issued since March 1, 2020 (and within 48 hours of issuance going forward) delaying, exempting, or waiving rules, permits, registrations, certifications, grants, or other agency approvals. If not, why not?
 - c. Extend all EPA comment periods and to revise public meeting processes, to enable meaningful public participation during the pandemic. If not, why not?
6. A description of any planned or anticipated delay, exemption, or waiver in:
 - a. approving disinfectants;
 - b. evaluating the safety of new or existing chemical substances;
 - c. finalizing rulemakings;
 - d. issuing air, water, and hazardous waste permits;

¹² <https://www.whitehouse.gov/wp-content/uploads/2020/03/M-20-16.pdf>

¹³ <https://www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf>

- e. registering pesticides or other products;
 - f. certifying vehicles, engines, or other products;
 - g. approving Energy Star products;
 - h. issuing grants; or
 - i. processing any other regulated entity application.
7. A description of how the coronavirus pandemic may delay or prevent the completion of air, water or other sampling, monitoring, laboratory testing, scientific research, or any other functions or activities that may be negatively impacted by the pandemic, including the anticipated delays, harms, or other impacts.

EPA's mission of protecting human health and the environment is being tested like never before, as much of its workforce – and indeed much of the nation – is adapting to new ways of working and communicating. We look forward to working with you to meet these challenges. Please provide answers to these questions and records responsive to these document requests by May 1, 2020. We are receptive to receiving information on a rolling basis or for some information to be provided via a telephone briefing to staff. If you have any questions, please feel free to ask the appropriate member of your staff to contact Michal Freedhoff (Michal.Freedhoff@epw.senate.gov) of the Environment and Public Works Committee staff. Thank you for your attention to this matter. With best regards we are,

Sincerely yours,



Thomas R. Carper
Ranking Member
Committee on Environment and
Public Works



Patrick Leahy
Ranking Member
Committee on Appropriations



Benjamin L. Cardin
United States Senator



Tom Udall
Ranking Member
Subcommittee on Interior, Environment
and Related Agencies
Committee on Appropriations



Chris Van Hollen
United States Senator



Sheldon Whitehouse
United States Senator



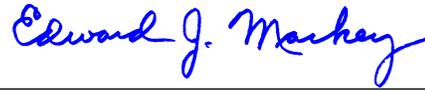
Jeffrey A. Merkley
United States Senator



Jack Reed
United States Senator



Martin Heinrich
United States Senator



Edward J. Markey
United States Senator



Cory A. Booker
United States Senator