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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

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April 29, 2020

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

Dear Administrator Wheeler:

I write to request information regarding the April 17, 2020 interim final rule on “*Continuous Emissions Monitoring; Quality Assurance Requirements During the COVID-19 National Emergency*.”¹ Specifically, I seek more information about any proposals to make this or other EPA rules permanent (rather than temporary) or otherwise applicable beyond the needs of the COVID-19 pandemic. Materials that appear in the docket for this rule seem to indicate that, at one point during the rulemaking process, EPA had the intent to make this interim rule permanent. Though some adjustments may need to be made to the manner in which the Environmental Protection Agency (EPA) expects the regulated community to collect information in order to prevent the spread of COVID-19, such adjustments must be temporary, targeted and transparent.

On April 1, 2020, I wrote you a letter that that was co-signed by ten other Senators.² The letter requested information about how EPA was adjusting its operations in light of the pandemic and it expressed concern with the deregulatory atmosphere at EPA. Agency sources have described this atmosphere as “relentless,” a characterization borne out by recent EPA rules that will erode protections from vehicle emissions,³ mercury and air toxic emissions,⁴ particulate matter emissions,⁵ and diminish protections for clean water.⁶ I still await EPA’s response to that correspondence. Moreover, the Washington Post reported on April 21, 2020 that senior administration officials are planning more regulatory rollbacks in order to boost the economy at the expense of environmental protection, stating that the administration is “likely to seek to make permanent some temporary regulations issued by agencies over the past few weeks to respond to the coronavirus pandemic.”⁷

¹ <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2020-0211-0001&contentType=pdf>

² <https://www.epw.senate.gov/public/index.cfm/2020/4/senators-to-epa-describe-your-covid-19-plans>

³ <https://www.epw.senate.gov/public/index.cfm/press-releases-democratic?ID=50A55201-4AB5-45BE-870B-E374472EA771>

⁴ <https://www.epw.senate.gov/public/index.cfm/press-releases-democratic?ID=5B565DAE-6844-4D2A-AC4E-79949F35D209>

⁵ <https://www.epw.senate.gov/public/index.cfm/press-releases-democratic?ID=2A3ED6B0-9DD4-4541-8121-2AD7BFD11AF7>

⁶ <https://www.epw.senate.gov/public/index.cfm/press-releases-democratic?ID=94A56404-4BC6-4754-B713-70657EA51FA7>

⁷ <https://www.washingtonpost.com/business/2020/04/21/white-house-coronavirus-regulations/>

The EPA's April 17 interim final rule amends the regulations applicable to sources that monitor and report emissions under the Acid Rain Program, the Cross-State Air Pollution Rule (CSAPR), and/or the NO_x SIP Call. It provides that "if an affected unit fails to complete a required quality-assurance, certification or recertification, fuel analysis, or emission rate test by the applicable deadline under the regulations because of travel, plant access, or other safety restrictions implemented to address the current COVID-19 national emergency and if the unit's actual monitored data would be considered valid if not for the delayed test, the unit may temporarily continue to report actual monitored data instead of substitute data."⁸ The interim final rule also states that, "To provide transparency regarding the use of the amended procedures, EPA will prepare summaries of the units and states, the delayed tests and test deadlines, and the completed tests and completion dates and will post the summaries on a publicly accessible website."⁹

Although the April 17 interim final rule does not on its face raise significant concerns, a review of the materials in the rulemaking docket indicate that EPA originally¹⁰ proposed to make the rule a *permanent* final rule rather than an interim final rule. EPA also wanted to propose that the amended reporting requirements would apply during *all* national emergencies rather than just the current COVID-19 pandemic, irrespective of whether ongoing¹¹ or future national emergencies present similar challenges. According to the interagency materials in the docket¹², this language was removed after some interagency commenters raised concerns that "the interim final rule does not provide any justification or explanation for why this temporary exemption should be made permanent."

I would be very concerned if permanent relaxations of environmental requirements were ultimately finalized using COVID-19 as a pretext. So that I can better understand EPA's intentions for this and other environmental reporting and enforcement rules during the COVID-19 pandemic, I ask that you provide the following:

1. Copies of all requests, recommendations, emails, memos or other documents prepared by EPA officials or submitted to EPA by private sector, state or other federal governmental entities to provide any relief from environmental compliance obligations that extend beyond the duration of the COVID-19 pandemic.
2. A commitment that EPA will not make any compliance, monitoring or enforcement waivers, exemptions, rules, or other actions taken in response to the COVID-19 pandemic permanent or otherwise extend beyond the timeframe of this national emergency. If you cannot make such a commitment, please state why not, and identify the specific rules or other actions for which you are considering making COVID-19 relief permanent or otherwise extending beyond the timeframe of this national emergency.

⁸ Id.

⁹ <https://www.regulations.gov/contentStreamer?documentId=EPA-HQ-OAR-2020-0211-0001&contentType=pdf>

¹⁰ <https://www.regulations.gov/document?D=EPA-HQ-OAR-2020-0211-0005>

¹¹ https://en.wikipedia.org/wiki/List_of_national_emergencies_in_the_United_States

¹² <https://www.regulations.gov/document?D=EPA-HQ-OAR-2020-0211-0003>

Please provide answers to these questions and records responsive to these document requests by May 19, 2020. 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, I am,

Sincerely yours,

A handwritten signature in blue ink that reads "Tom Carper". The signature is fluid and cursive, with the first name "Tom" and last name "Carper" clearly legible.

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