

**Clean Air Carolina • Environmental Defense Fund •
Natural Resources Defense Council • NC Conservation Network •
Southern Environmental Law Center • Waterkeeper Alliance**

March 30, 2020

Secretary Michael Regan
NC Department of Environmental Quality
217 West Jones Street
Raleigh, NC 27603

Attorney General Josh Stein
NC Department of Justice
114 West Edenton Street
Raleigh, NC 27603

SENT BY EMAIL

Dear Secretary Regan and Attorney General Stein:

Last week the U.S. Environmental Protection Agency (EPA) released the first of several Enforcement Policies that will guide federal enforcement decisions during the ongoing COVID-19 pandemic. We write to encourage the NC Department of Environmental Quality (DEQ) and the NC Department of Justice (DOJ) to issue a North Carolina-specific policy that recognizes the state's existing enforcement flexibility and avoids the federal agency's invitation for noncompliance. Our organizations advocate on behalf of hundreds of thousands of North Carolinians who depend on fair and consistent enforcement of pollution control rules to protect our families, properties, and communities.

EPA's new policy announces that the agency "does not expect to seek penalties for noncompliance with routine monitoring and reporting obligations" if a company claims COVID-19 related problems and EPA agrees. Yet, these routine obligations provide assurance that discharge and emissions limits are being met and public health protected. Notably, the federal policy does not tie flexibility to the impact of noncompliance on nearby or downstream communities. It abandons accountability across the board rather than providing flexibility on a case-by-case basis as extant policies do. The new federal policy fails to require even minimal after-the-fact showings that are open to public review and scrutiny that could prevent abuse.

We ask that you clarify that DEQ will continue to protect our air and water despite the EPA non-enforcement policy. Such a statement would give confidence to communities burdened by air and water pollution in addition to COVID-19. It would also provide clarity to regulated entities in North Carolina who might otherwise be misled by EPA's announcement.

We request that your agencies emphasize these points:

- North Carolinians depend on DEQ to protect clean air and clean water, particularly during times of crisis.
- State law provides significant and sufficient flexibility for DEQ staff to work with regulated entities to meet important regulatory requirements.
- Monitoring and reporting requirements ensure that public health and the environment are being protected.
- Pollution control systems are Essential Operations under the Governor's March 27 Stay At Home order because of the vital role they play in keeping communities safe.
- DEQ recognizes that during this pandemic, with staff falling unpredictably ill or needing to quarantine for extended periods of time, regulated entities may face challenges meeting some ongoing monitoring and reporting deadlines, and the agency will work with regulated entities based on individual circumstances.
- This flexibility does not remove the obligations of regulated entities to communicate with state and local emergency managers when the entities have knowledge or constructive knowledge that their pollution control systems are failing or at heightened risk of failure.

Emerging evidence suggests that Americans with heavy lifetime exposures to pollution may face disproportionately greater risks from this pandemic, underlining the need to maintain strong protections for our air and water. Yet, we also recognize that the ongoing COVID-19 pandemic presents a major challenge for all our public and private institutions, including environmental managers. At a time when federal leadership has been lacking or muddled, we appreciate the strong state leadership in health policy and emergency response we have observed over the last month. Now similar state leadership is needed in the context of environmental enforcement as well.

We look forward to your response and stand ready to help any way we can.

Sincerely,

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