

PUBLICATION

A Challenge to EPA's Enforcement and Compliance Assurance Program in the Wake of COVID-19

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On March 26, 2020, the U.S. Environmental Protection Agency ("EPA") issued a memorandum loosening enforcement for non-compliance of certain environmental laws and regulations as a result of the COVID-19 pandemic. Essentially, EPA indicated that while entities should make every effort to comply with environmental compliance obligations, if compliance is not reasonably practical as a result of burdens caused by COVID-19, such entities should attempt to "act responsibly under the circumstances in order to minimize the effects and duration of any non-compliance caused by COVID-19," and "return to compliance as soon as possible."

As a result of this unprecedented relaxation of environmental laws, several states have challenged the EPA. Lead by New York, a coalition of nine state attorney generals filed suit in the Southern District of New York seeking to block any entities from taking advantage of the EPA policy. The gravamen of the argument is that the policy exceeds the EPA's statutory authority, is arbitrary and capricious, and issued without complying with legal notice and comment requirements. The lawsuit also alleges that EPA "abdicates EPA's statutory duties to protect public health and the environment." See 6/12/20 [Inside EPA Weekly Report 24, 2020 WLNR 16324179](#).

In addition, U.S. Senate Democrats have expressed concerns to EPA about its regulatory rollbacks in air and climate policy, including particulate matter standards, interstate pollution transport, vehicle greenhouse gas standards, wood heater standards, and other rules. The Senate Democrats also criticized EPA's proposal to keep national ambient air quality standards for particulate matter unchanged, despite scientific evidence suggesting that tightening the standards would benefit public health. Furthermore, the Senate Democrats criticized EPA's rollback of vehicle fuel efficiency standards. See 6/19/20 [Inside EPA Weekly Report 25, 2020 WLNR 17006044](#).

To date, EPA has not responded to these complaints and is continuing to defend itself in the litigation related to the rollback of environmental enforcement. For more information, contact any member of [Baker Donelson's Environmental Team](#). You may also visit the [Coronavirus \(COVID-19\): Navigating the Path Ahead](#) information page on our website.