

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

STATE OF NEW YORK, STATE OF
CALIFORNIA, STATE OF ILLINOIS, STATE OF
MARYLAND, PEOPLE OF THE STATE OF
MICHIGAN, STATE OF MINNESOTA, STATE
OF OREGON, STATE OF VERMONT, and
COMMONWEALTH OF VIRGINIA,

Plaintiffs,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; ANDREW WHEELER
as Administrator of the UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY;
and SUSAN PARKER BODINE as Assistant
Administrator of the UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY,

Defendants.

COMPLAINT

20-CV-3714

INTRODUCTION

1. Plaintiffs (States) bring this action against the Environmental Protection Agency (EPA), Administrator Andrew Wheeler, and Assistant Administrator Susan Parker Bodine to challenge a final agency policy under which EPA has stated it “will not” enforce a wide range of monitoring and reporting requirements under federal environmental laws. EPA justified the policy, “Temporary Policy on COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program” (nonenforcement policy), as a necessary response to the COVID-19 pandemic. However, rather than exercising enforcement discretion as authorized by law, EPA issued a broad, open-ended policy that gives regulated

parties free rein to self-determine when compliance with federal environmental laws is not practical because of COVID-19. The nonenforcement policy also makes it optional for parties to report that noncompliance to EPA, and to state and local agencies. The policy's effective waiver of these requirements, which are foundational to our federal environmental laws, exceeds EPA's authority.

2. Despite EPA's longstanding recognition that environmental monitoring and reporting requirements protect public health by informing communities of pollution hazards and deterring industry noncompliance with pollution limits, EPA failed—in the midst of a public health emergency—to consider the impacts of relaxing those obligations on public health. It was arbitrary and capricious for EPA to adopt a broad ranging policy without considering whether it will exacerbate harms to public health during the current crisis.

3. EPA has primary enforcement authority for a number of critical federal environmental laws in states as well as oversight of state enforcement of all federal environmental laws. The nonenforcement policy will result in less federal enforcement, reduced industry compliance with substantive requirements, an increased risk of chemical accidents and releases, and a decrease in publicly-available information to address pollution. These impacts will injure the States and our residents. The nonenforcement policy places the States between a rock and hard place: either incur increased burdens and attempt to fill EPA's enforcement shoes at a time when they are increasingly strapped for resources, or risk the health of our residents based on the unfounded assumption that the policy will not cause harm.

4. The nonenforcement policy is a general statement of policy that is subject to judicial review under the Administrative Procedure Act (APA), not the type of individualized enforcement decision that may be entrusted to EPA's discretion. Because the nonenforcement policy binds EPA in future enforcement actions, creates rights, and imposes obligations on both EPA and regulated entities, the policy is a legislative rule and a final agency action that is subject to judicial review under the APA, 5 U.S.C. § 704. EPA's failure to issue the policy without complying with the APA's notice-and-comment requirements was unlawful.

5. Because the nonenforcement policy is unlawful and harms the States and our residents, the States seek a ruling from this court vacating the policy as contrary to law.

JURISDICTION AND VENUE

6. The Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 2201(a). Jurisdiction is also proper under the judicial review provisions of the APA, 5 U.S.C. §§ 702 and 704.

7. Venue is proper within this federal district, pursuant to 28 U.S.C. § 1391(e), because plaintiff State of New York resides within the district.

THE PARTIES

8. Plaintiff New York is a sovereign state of the United States of America. As a body politic and a sovereign entity, it brings this action on behalf of itself and as trustee, guardian, and representative of all residents, citizens, and political subdivisions of New York.

9. Plaintiff State of California is a sovereign state of the United States of America. As a body politic and a sovereign entity, it brings this action on behalf of itself and as trustee, guardian, and representative of all residents, citizens, and political subdivisions of California.

10. Plaintiff State of Illinois is a sovereign state of the United States of America. As a body politic and a sovereign entity, it brings this action on behalf of itself and as trustee, guardian, and representative of all residents, citizens, and political subdivisions of Illinois.

11. Plaintiff State of Maryland is a sovereign state of the United States of America. Maryland brings this action by and through its Attorney General, Brian E. Frosh, on behalf of itself and on behalf of its citizens and residents. The Attorney General of Maryland is the State's chief legal officer with general charge, supervision, and direction of the State's legal business. Under the Constitution of Maryland, and as directed by the Maryland General Assembly, the Attorney General has the authority to file suit to challenge action by the federal government that threatens the public interest and welfare of Maryland residents.

12. The Michigan Attorney General is authorized by statute and under common law to initiate litigation in the public interest on behalf of the People of the State of Michigan.

13. Plaintiff State of Minnesota is a sovereign state of the United States of America. As a body politic and a sovereign entity, it brings this action on behalf of

itself and as trustee, guardian, and representative of all residents, citizens, and political subdivisions of Minnesota.

14. Plaintiff State of Oregon is a sovereign state of the United States of America. As a body politic and a sovereign entity, it brings this action on behalf of itself and as trustee, guardian, and representative of all residents, citizens, and political subdivisions of Oregon.

15. Plaintiff State of Vermont is a sovereign state of the United States of America. It brings this action through Attorney General Thomas J. Donovan, Jr. The Attorney General is authorized to represent the State in civil suits involving the State's interests when, in his judgment, the interests of the State so require.

16. Plaintiff Commonwealth of Virginia is a sovereign state of the United States of America. As a body politic and a sovereign entity, it brings this action on behalf of itself and as trustee, guardian, and representative of all residents, citizens, and political subdivisions of Virginia.

17. Defendant EPA is an agency of the United States government.

18. Defendant Andrew Wheeler is the Administrator of EPA and the highest-ranking official in the EPA. He is sued in his official capacity.

19. Defendant Susan Parker Bodine is the Assistant Administrator of the EPA and the signatory of the Policy. She is sued in her official capacity.

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