

May 13, 2020

ATTORNEY GENERAL RAOUL SUES OVER LIMITED ENFORCEMENT OF FEDERAL ENVIRONMENTAL AND PUBLIC HEALTH LAWS

Raoul, Seven Attorneys General Argue EPA's New Policy Ignores Critical Impacts of Non-Compliance on Public Health, Vulnerable Communities

Chicago — Attorney General Kwame Raoul today joined a coalition of eight attorneys general in filing a lawsuit against the Environmental Protection Agency (EPA) challenging its policy under which the EPA “will not” enforce bedrock monitoring and reporting obligations under a wide range of federal environmental laws due to the coronavirus disease 2019 (COVID-19) crisis.

The coalition argues that the EPA’s policy, called the “Temporary Policy on COVID-19 Implications for EPA’s Enforcement and Compliance Assurance Program” (non-enforcement policy), is overly broad, lacks transparency and accountability, and will result in higher pollution emissions by industry and corresponding impacts on public health and the environment.

“It is inexcusable that the federal government would use the COVID-19 pandemic as an opportunity to push an anti-environmental agenda that will negatively impact the health and safety of millions of Americans,” Raoul said. “As we combat the spread of a deadly respiratory disease that has impacted thousands of Illinois residents, I will continue fighting against policies that jeopardize public health and our environment.”

On March 26, the EPA issued the non-enforcement policy, which applies retroactively to March 13. The EPA states in the policy that it does not intend to take enforcement action against companies that violate existing reporting and monitoring requirements for laws such as the Clean Air, Clean Water, and Safe Drinking Water Acts, provided that the companies link COVID-19 to their non-compliance. The policy also makes it optional for parties to report non-compliance to the EPA, and to state and local agencies.

The coalition recognizes the immense challenges posed by the COVID-19 pandemic and its response but argues that it was arbitrary and capricious for EPA to adopt the “across the board” non-enforcement policy without considering whether it will worsen harms to public health. Further, the agency could have pursued a reasonable policy that provides necessary and appropriate flexibility to businesses without waiving requirements necessary to protect public health and the environment.

In the lawsuit, the coalition contends that the EPA lacks legal authority to effectively waive critical monitoring and reporting obligations that inform regulators and the general public of pollution hazards. The lawsuit also alleges that the EPA failed to consider the adverse impacts on public health that the policy will have amidst COVID-19 pandemic, including impacts from increased pollution, and a lack of available public information about that pollution, that may result from the policy. This circumstance is made more troubling by the EPA’s statement in the policy that it may waive enforcement even in situations where a polluter’s non-compliance presents an imminent threat to public health or the environment.

On April 15, Raoul and a coalition of state attorneys general submitted a letter to EPA Administrator Andrew Wheeler regarding the policy’s impact on bedrock environmental and public health laws – and the protections these laws afford to public health, safety and the environment. The letter urged that the March non-enforcement policy be rescinded in favor of guidance to companies that doesn’t put the health of our communities at even greater risk than they are already facing due to the coronavirus.

Joining Raoul in filing the lawsuit are the attorneys general of California, Maryland, Michigan, Minnesota, New York, Oregon and Vermont.