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Federal Dereliction of Duty: Environmental Racism Under Covid-19



Just Transition Alliance, The Farmworker Association of Florida, WE ACT for Environmental Justice, Indigenous Environmental Network, and Los Jardines Institute in partnership with the Vermont Law School Environmental Justice Clinic

EXECUTIVE SUMMARY

On March 26, 2020, just as COVID-19 was spreading rapidly in the United States, the Environmental Protection Agency (EPA) [announced a dramatic deregulation](#) of federal environmental laws. This occurred just three days after the American Petroleum Institute, representing 600 oil and gas companies, requested by [letter](#) that EPA provide industry with relief from federal environmental monitoring and reporting requirements. EPA acquiesced, issuing a policy allowing industry to self-regulate, and making clear that noncompliance could occur without consequence for every federally regulated source of pollution, including chemical manufacturing, coal-fired power plants, sewage and waste facilities, and factory farms. By June, EPA had further [eased regulations](#) intended to protect farmworkers against pesticide exposure.

EPA's own Office of Inspector General has since found an [overall decline in enforcement](#) by EPA in fiscal year 2020. As the deregulation policy severely limited data collection and transparency during this period and given insufficiencies in EPA's [aging national ambient air quality monitoring system](#), we cannot know the full extent of the policy's contribution to that decline or the harm caused. However, existing data shows that EPA's policy created the greatest danger to public health for People of Color, Indigenous Peoples, and low-income communities where these industries are concentrated and COVID-19 poses heightened risk.

During the five-and-a-half months this policy remained in effect, COVID-19 cases in the U.S. skyrocketed to a cumulative 6,163,027 cases. Research

showed disproportionate [rates](#) of infection, hospitalization, and deaths amongst Black, Latino/a, and Indigenous people. By fall 2020, the Navajo Nation faced [a higher per capita death rate](#) than any state in the U.S. To date, COVID-19 has infected at least [561,000 farmworkers](#), though that number is likely [an underestimate](#).

Early studies linked severe COVID-19 illness and death to air pollution exposure. A recently published peer reviewed study shows communities with the highest concentrations of toxic sites saw [COVID death rates shoot up within six days of EPA's rollback](#). The result: a 10-15% increase in daily mortality rate and an estimated 7,046 additional deaths. Counties with higher numbers of Black residents felt these impacts most severely.



Environmental justice organizations including the [Just Transition Alliance](#), [Indigenous Environmental Network](#), [The Farmworker Association of Florida](#), [Los Jardines Institute](#), and [WE ACT for Environmental Justice](#) challenged EPA's policy through advocacy and litigation. However, the lack of monitoring and reporting obscured the data needed to show clearly how EPA exacerbated the cumulative risks of COVID-19 and air pollution. Moreover, our communities still lack adequate legal tools to defend against environmental racism.

These environmental justice groups, along with the Vermont Law School Environmental Justice Clinic, are releasing this report as this country works to turn the page on the Trump era and set a new course for environmental justice, and as COVID-19 rates are again surging. We need a full examination of EPA's actions and—for the first time—strong, enforceable environmental justice and civil rights laws to ensure no federal agency violates its core responsibilities in the future.

Increased pollution stemming from EPA deregulation created a perfect storm.

Early in the pandemic, [multiple studies](#) demonstrated links between air pollution and risk of COVID-19 exposure and death—notably exposure to PM2.5. [A new peer reviewed study](#) shows that EPA's rollback led to specific and significant air pollution increases, with greater impacts in areas with higher concentrations of industrial sites. These conditions, the COVID-19 pandemic, and increased toxic air pollution created a perfect storm, resulting in increased COVID-19 severity and deaths within days of EPA's announcement.

Even before COVID-19, race was the [greatest predictor of toxic waste sites](#) across the nation.

- Black Americans are exposed to more [pollution from all major emission sources](#).
- Black and Latino/a residents are more likely to live near [high risk chemical facilities](#).
- Indigenous nations contend with a proliferation of [toxic contamination, mining, and fossil-fuel infrastructure](#) on and near Tribal land.
- At every stage of its life cycle, [oil and gas production disproportionately harms](#) People of Color, Indigenous Peoples, and low-income communities.
- People of Color are five times more likely to live near [industrial-scale farms](#), contending with noxious odors and drinking water pollution.
- Farmworkers, who are 75% Latino/a immigrants and often lack legal status, are disproportionately impacted by air and water [pollution from industrial agriculture and exposure to harmful pesticides](#).
- People of Color, Indigenous Peoples, and low-income communities are disproportionately exposed to the [air pollutants](#) like ozone and fine particulate matter (PM2.5) linked to increased COVID risks.

Polluters took advantage of EPA's policy to violate environmental laws.

By waiving reporting requirements, EPA created a black hole of information that hid much of the harm caused by its policy. But state-collected data makes clear that polluters took advantage of the rollback. By July 2020, an estimated 3,000 waivers had been granted, including to 55 facilities with a history of egregious noncompliance. For example,

- According to the Associated Press, regulators eased up enforcement for “smokestacks, medical waste shipments, sewage plants, oilfields and chemical plants.”
- In Texas, regulated entities requested at least 248 waivers. The most frequent waiver request by major oil and gas companies was for monitoring chemical leaks.
- Over 100 sewage and wastewater treatment plants requested waivers.
- Around the country, farms and feedlots requested waivers for manure and livestock disposal and sediment and erosion control.

EPA rescinded its policy, without recourse.

Nine states sued EPA for abusing its discretion by issuing a broad, open-ended policy and delegating responsibility to polluting industries without public participation. A coalition of public interest groups, including environmental justice advocates, filed a petition for emergency rulemaking and a lawsuit asking EPA to notify state authorities of noncompliance and to publish information online.

The U.S. House of Representatives and the Senate hosted a bipartisan briefing, raising questions about the legality of the policy, calling for transparency, and asking the agency “to clarify how it will operate in order to further safeguard public health.” EPA’s own Office of Inspector General found that EPA’s policy “threaten[ed] the Agency’s overall mission to protect human health and the environment.”

EPA voluntarily withdrew its policy on August 31, 2020, citing “the goal of returning to normal operations.” One year later, EPA has not been held accountable, and communities still have no way of knowing which laws were violated, and by whom.

EPA’s unprecedented expansion of its enforcement discretion was a dereliction of the agency’s duties.



Long standing [environmental justice policy](#) requires EPA to identify and address the impacts of its decisions on People of Color, Indigenous Peoples, and low-income communities—and to include these communities in decision-making. Since 1994, [Executive Order 12898](#), Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, has directed EPA—and all federal agencies—to identify and address any disproportionately high and adverse health or environmental effects of their actions on People of Color, Indigenous Peoples, and low-income communities. The EO also mandates that agencies take “proactive steps” to facilitate public participation, meaningful involvement, and access to information in decisions affecting their health and livelihoods.

By initiating deregulation, EPA ignored environmental justice policy and principles. The resulting deficiency in pollution and monitoring data disempowered individuals and communities from protecting themselves even under existing environmental laws. Absent federal monitoring and reporting, many states and Tribes expended limited resources in the midst of the pandemic in an attempt to fill the enforcement void. That EPA, or any federal agency, can disregard environmental justice mandates without consequence speaks to the frightening gap in legal recourse for those most affected.

EPA’s dereliction of duty and the potential for reoccurrence must be addressed.

EPA’s decision to succumb to corporate pressure instead of protecting those most at risk from a public health crisis cannot happen again. We need systemic changes to ensure all federal agencies safeguard our communities and that we have the tools to protect ourselves. We call on the Biden-Harris Administration and Congress to take the following actions:

- Investigate the impacts of EPA’s rollback on environmental justice, public health, and racial inequality through Congressional Hearings and auditing by the Office of Inspector General.
- With COVID-19 rates rising, mandate that all federal agencies prioritize mitigation of harm to at-risk communities in decisions regarding monitoring, compliance, and enforcement.
- Provide communities with the most protective monitoring tools to assess baseline cumulative environmental risks and harms, building on new EPA efforts to address health disparities.
- Bolster EPA enforcement of all environmental and civil rights laws and compliance with EO 12898, dedicating resources, setting benchmarks, and consulting with People of Color, Indigenous Peoples, and low-income communities to ensure effective action.
- Pass the [Environmental Justice for All](#) and [Environmental Justice](#) Acts to establish enforceable environmental justice and civil rights protections for People of Color, Indigenous Peoples, and low-income communities that cannot be ignored by future administrations.