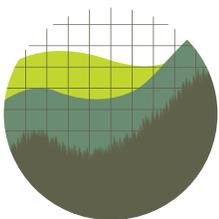




Policy Shifts in a Pandemic

*Assessing the Environmental Laws and Policies
Weakened in Response to Covid-19*



Institute for
Policy Integrity

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Executive Summary

In response to the Covid-19 pandemic, federal, state, and municipal policymakers adopted a number of temporary policies that suspended, delayed, or relaxed various environmental safeguards. The Institute for Policy Integrity created a public database to track these policies. This report analyzes the nature and the scope of these actions, along with their public health and environmental impacts, where ascertainable. It also recommends criteria that agencies can use to determine when to end any ongoing policy concessions, so that public safeguards can be restored as quickly as possible. Finally, this report provides guidance on how agencies can work to promote transparency about these actions, counteract detrimental effects, and preemptively create guidelines to improve responses in a future emergency.

Government agencies modified a range of environmental policies in response to the pandemic. Three of the most common categories of policy changes involved:

- Concessions to fossil fuel companies that reduced royalty payments or adjusted leasing terms for public lands;
- A reduction in pollution monitoring requirements for regulated entities and related enforcement; and
- Changes in municipal waste programs, such as suspensions of recycling initiatives.

Agencies cited a number of different justifications for their policies, including health concerns and budget or resource constraints. But in many cases agencies did not provide any clear rationale for their actions, raising concerns that the pandemic might have been used as a means for providing unnecessary concessions to favored industries. Some policy concessions were also granted in a non-transparent, case-by-case manner. For instance, the U.S. Environmental Protection Agency (EPA) received roughly 300 requests from regulated entities to waive water pollution discharge reports typically required under the Clean Water Act, but the agency did not provide any details about what specific reporting requirements entities have avoided since the pandemic began. In many cases, agencies also failed to establish specific timelines or criteria for lifting suspensions and modifications.

These concessions led to a number of problematic environmental and public health outcomes. Though data limitations and a lack of agency disclosure hinder a comprehensive analysis of these impacts, some key examples are clear. For instance, reduced oversight of regulated entities likely resulted in greater levels of pollution. After EPA announced a temporary policy relaxing pollution enforcement requirements, some areas saw a 14% spike in levels of particulate matter pollution. In other cases, policies that granted concessions to the fossil fuel industry created incentives for increased resource extraction while simultaneously reducing public revenue generated by royalties and taxes. Because agencies frequently did not prioritize transparency in implementing these measures, it is difficult to assess the true extent of their direct and indirect effects, or whether they achieved their intended purposes.

Going forward, agencies should take stock of the consequences of their actions to the fullest extent possible. If agencies identify temporary policies that have caused environmental harms, they should end or reverse those measures as soon as practicable. Similarly, agencies should review whether ongoing policies that were once thought appropriate in response to the Covid-19 crisis are still necessary, even if agencies cannot identify specific adverse effects. For any policies that are still justified to address pandemic-related concerns, agencies should establish clear guidelines for when these will be reevaluated and rescinded.

Agencies should use lessons learned from the pandemic to create new guidelines for responding to emergencies in an effective and transparent manner. Future responses should focus on:

- Establishing a clear rationale for adopting a particular policy response at the time it is announced;
- Conducting ongoing, data-driven evaluations of temporary policies;
- Setting timelines for regular policy reevaluation processes; and
- Establishing resilience funds so that resources do not need to be diverted from important environmental protection programs when emergencies arise.

These measures can help improve government entities' resilience to future public health or economic crises, including those brought on by climate change. Policymakers should use the lessons from the Covid-19 pandemic to ensure that important safeguards are not needlessly compromised in the future.

I. How and Why Government Agencies Modified Environmental Policies in Response to Covid-19

In response to the public health and fiscal challenges that have accompanied the Covid-19 crisis, numerous agencies across all levels of government adopted temporary policies—or temporarily suspended existing policies—that weakened environmental protections. These policy changes affected both regulated industries and the public.

A. Policy Changes Made in Response to Covid-19

This report assesses many of the most significant federal, state, and local environmental policies weakened as a result of the pandemic. This analysis aims to shed light on the impacts of these policy changes and help improve policy decisionmaking in future situations when emergencies might prompt similar actions. Specific actions are catalogued below, and Section II contains additional details on the categories of policies that were changed.

1. Federal Actions

Federal agencies adopted more than 20 programs between March and September 2020, that relaxed environmental policies.¹ For example, agencies weakened environmental protections by waiving or delaying enforcement against entities that failed to meet certain pollution compliance requirements,² deferring hazardous waste clean-up and monitoring efforts,³ and providing financial relief for fossil fuel producers on federal lands.⁴ The Department of Interior’s Bureau of Land Management (BLM), the Environmental Protection Agency (EPA), and the Federal Energy Regulatory Commission (FERC) issued some of the most significant measures along these lines. The table below provides a list of these federal actions.

Federal Agency	Action	Status ⁵	Date
Department of Interior’s Bureau of Land Management	Reduced royalty payments for some oil and gas producers. ⁶ DOI used existing law to grant individual requests from oil and gas producers to reduce royalty payments, and promised to process requests within five days. Operators could set their own reduced rates. Reductions applied for sixty days and could be extended.	No longer in effect	April 21, 2020
Department of Interior’s Bureau of Land Management	Suspended leases for some oil and gas producers. ⁷ DOI used existing law to grant individual requests from oil and gas producers to suspend leases, extending the overall duration of the leases by allowing companies to cease operations without losing land rights. DOI promised to process requests within five days. Suspensions applied for sixty days and could be extended.	No longer in effect	April 21, 2020
Department of Justice	Offered blanket relief to industry on consent decree payments. ⁸ The Environment and Natural Resources Division at Department of Justice originally paused collection of any payments due from industry pursuant to consent decrees until May, but then extended the amnesty until August.	No longer in effect	April 14, 2020

Federal Agency	Action	Status	Date
Environmental Protection Agency	Reduced monitoring and enforcement of pollution rules. ⁹ From March 13 to August 31, 2020, companies that are typically required to report to EPA when they discharge a certain level of air or water pollution were permitted to suspend reporting.	No longer in effect	March 26, 2020
Environmental Protection Agency	Deferred gasoline and biofuel blending requirements. ¹⁰ EPA postponed the deadline for oil refiners, water utilities, and other industries to switch to cleaner-burning summer-grade gasoline from May 1 to May 20, 2020.	No longer in effect	March 27, 2020
Environmental Protection Agency	Reduced and suspended fieldwork on case-by-case basis. ¹¹ EPA reduced or paused clean-up work at Superfund sites and other program locations where continuing to work may have endangered health and safety.	Not yet rescinded	April 10, 2020
Environmental Protection Agency	Permitted disinfectant manufacturers to change suppliers & ingredients without EPA approval. ¹² EPA allowed disinfectant manufacturers to forego approval for changes to certain ingredient suppliers or for changes to ingredients.	Not yet rescinded	April 14, 2020
Environmental Protection Agency	Waived quality controls for systems that monitor air pollution. ¹³ EPA waived requirements that assure the quality of continuous emission monitoring systems used to track air pollution from industrial facilities.	No longer in effect	April 22, 2020
Environmental Protection Agency	Proposed to permit stores to sell wood-fired heating systems that do not meet emissions standards. ¹⁴ EPA proposed extending the deadline for retailers to stop selling stoves and other wood-fired heating systems that fail to meet new emissions standards until the end of November 2020. Retailers had five years to sell off non-compliant inventory before the current May 15, 2020 compliance deadline.	Proposed but never finalized	May 22, 2020
Environmental Protection Agency	Reduced and delayed payment of settlement payments. ¹⁵ According to media reports, EPA issued an internal memo allowing companies that have lost 25% of profits due to the coronavirus to reduce settlement payments, delay payments by a renewable 60 day period, or pay in installments over an additional three year period.	Not yet rescinded	May 26, 2020
Federal Energy Regulatory Commission	Deferred enforcement activities. ¹⁶ FERC deferred enforcement activities for regulatory violations, including conducting no audits until after July 31, 2020 and limiting surveillance inquiries to behavior that poses a significant risk of harm to the market.	Not yet rescinded	April 2, 2020
Federal Energy Regulatory Commission	Provided temporary extensions & waivers for pipeline operators. ¹⁷ FERC announced that it would accept requests for extensions and temporary waivers for certain regulations from pipeline operators, including cost-of-service filing, reporting, and recordkeeping requirements. Operators could also request a waiver for tariffs to become effective on less than 30 days' notice.	Not yet rescinded	May 8, 2020
National Highway Traffic Safety Administration	NHTSA further delayed civil penalty adjustment. ¹⁸ National Highway Traffic Safety Administration (NHTSA) issued an interim final rule that delayed an adjustment of the civil penalty amount for auto manufacturers that fail to comply with fuel efficiency requirements.	Not yet rescinded	January 14, 2021

Federal Agency	Action	Status	Date
National Oceanic Atmospheric Administration	Waived observer requirement on boats. ¹⁹ National Oceanic Atmospheric Administration (NOAA) announced that it would waive the requirement for observers and at-sea monitors for fishing boats on a case-by-case basis. On September 21, 2020, the measure to waive the observer requirement was extended through March 26, 2021. From March 30 to August 14, 2020, NOAA also waived observer requirements for all boats in the Northeast.	Not yet rescinded	March 24, 2020
Nuclear Regulatory Commission	Deferred maintenance and inspections of nuclear plants. ²⁰ The Nuclear Regulatory Commission (NRC) announced that nuclear plants would be able to delay required maintenance and inspection.	Not yet rescinded	March 27, 2020
Nuclear Regulatory Commission	Permitted longer worker shifts. ²¹ NRC permitted workers to work longer than allowed under current regulation.	Not yet rescinded	March 28, 2020
Nuclear Regulatory Commission	Deferred annual licensing payments for nuclear plants. ²² NRC allowed NRC-permitted nuclear operators with annual licensing payments due in April through June to pay by July 22, 2020.	No longer in effect	April 10, 2020
Nuclear Regulatory Commission	Deferred safety reporting due to hardship. ²³ NRC allowed licensees to defer submitting the Owner's Activity Report after a refueling outage if the licensee demonstrated a hardship without a compensating increase in the level of quality and safety as an alternative.	Not yet rescinded	April 9, 2020
Nuclear Regulatory Commission	Exemptions from operator requalification requirements. ²⁴ NRC considered exemptions for requalification requirements for licensees for up to two years including: (1) requalification program scheduling, (2) licensed operator active status for research and test reactors, and (3) delays in completion of biennial medical examinations of licensed operators and senior operators.	Not yet rescinded	April 14, 2020
Nuclear Regulatory Commission	Exemptions from licensing requirements. ²⁵ NRC announced that licensees could request expedited review of licensing requirement exemptions related to (1) on-the-job training, (2) medical examinations for annual physical requalification, (3) tactical response and licensee-conducted force-on-force exercises, (4) annual requalification, (5) weapons range activities, (6) firearm instructor and armorer certifications, and (7) semiannual test firing.	Not yet rescinded	April 20, 2020
Pipeline and Hazardous Material Safety Administration	Prioritized safety-sensitive inspections. ²⁶ PHMSA only conducted "safety-sensitive" inspections of pipeline infrastructure.	Not yet rescinded	March 19, 2020
Pipeline and Hazardous Material Safety Administration	Waived enforcement of shift length limitations. ²⁷ PHMSA did not enforce limitations on how long employees can work in areas like control rooms.	Not yet rescinded	March 20, 2020
Pipeline and Hazardous Material Safety Administration	Delayed enforcement of compliance deadlines for new rule. ²⁸ PHMSA did not penalize pipeline operators for failing to comply "for reasons attributable to the National Emergency" with July 1, 2020 compliance deadlines in a new pipeline safety rule. Operators eligible for delayed enforcement had until December 31, 2020 to comply with the relevant record-keeping and transmission line assessment requirements.	No longer in effect	April 22, 2020

2. State Actions

More than two dozen states also adopted at least one temporary order suspending or loosening environmental protections in response to the pandemic.²⁹ Similar to the federal programs, many state measures affected local air quality compliance requirements, hazardous waste clean-up efforts, and oil production. Some state policies also targeted municipal waste initiatives designed to reduce trash and local pollution. The table below provides a list of state agency actions taken in response to Covid-19 that have affected environmental protections.

State	Action	Status	Date
Arizona	Waived vehicle emissions testing for residents over 65. ³⁰ Arizona waived the vehicle emissions testing requirement for one year for all residents over 65.	No longer in effect	March 26, 2020
Arkansas	Waived fees for oil and gas companies. ³¹ The Arkansas Executive Department directed the Oil and Gas Commission to waive production assessment fees for natural gas and oil producers and to waive annual well fees due for noncommercial class II UIC disposal wells located in certain regions of the state.	Not yet rescinded	May 1, 2020
California	Extend regulatory deadlines after case-by-case evaluation. ³² The California Environmental Protection Agency (CalEPA) directed industry to contact CalEPA to request time-limited remedies, like deadline extensions, where needed due to emergency requirements or a hardship. Entities must contact CalEPA before violating a regulatory requirement.	Not yet rescinded	April 15, 2020
California	Suspended enforcement of container redemption requirement. ³³ California suspended enforcement of the law requiring retailer participation in the state's bottle redemption program.	No longer in effect	April 22, 2020
California	Suspended plastic bag ban and single-use bag fee. ³⁴ From April 22 to June 22, 2020, California suspended its ban on single-use plastic bags and its collection of a 10-cent fee per bag.	No longer in effect	April 22, 2020
California	Suspended physical notice requirements & tribal consultation deadlines. ³⁵ California suspended physical notice requirements under the California Environmental Quality Act for 60 days; digital posting and outreach requirements remained in effect. California also suspended consultation timelines that apply to state and tribal authorities evaluating environmental impact report.	No longer in effect	April 22, 2020
Colorado	Suspended vehicle emissions testing. ³⁶ Colorado suspended its vehicle emissions testing programs.	No longer in effect	March 25, 2020
Connecticut	Suspended enforcement of container redemption requirement. ³⁷ From March 17 through June 3, 2020, Connecticut suspended enforcement of the law requiring retailer participation in the state's bottle redemption program. Connecticut announced the resumption of enforcement on May 6, 2020.	No longer in effect	March 17, 2020
Connecticut	Suspended collection of plastic bag tax. ³⁸ From March 26 through June 30, 2020, Connecticut suspended collection of its ten-cent plastic bag tax. Connecticut announced the resumption of enforcement on May 13, 2020.	No longer in effect	March 26, 2020
Florida	Extended pollution reporting, monitoring, and cleanup deadlines by 30 days. ³⁹ The Florida Department of Environmental Protection granted regulated entities a 30-day extension to comply with pollution reporting, monitoring, and cleanup deadlines.	No longer in effect	September 4, 2020

State	Action	Status	Date
Georgia	Reopened polluting medical sterilization facility. ⁴⁰ Georgia reopened a medical equipment sterilization facility that closed due to concerns about high emissions of carcinogenic ethylene oxide.	Not yet rescinded	March 25, 2020
Hawaii	Waived enforcement of air quality compliance requirements. ⁴¹ The Hawaii Department of Health, Clean Air Branch indicated that if Covid-19 caused an unavoidable air pollution noncompliance situation for a regulated entity, it would take this into account when deciding whether to bring an enforcement action.	Not yet rescinded	April 17, 2020
Illinois	Retail stores discontinued use of reusable bags. ⁴² Illinois' governor issued an executive order on June 26, 2020, banning the use of reusable bags at retail stores, but the city of Chicago maintained its own bag tax policy.	No longer in effect	March 28, 2020
Illinois	Suspended vehicle emissions testing. ⁴³ Illinois suspended its vehicle emission testing programs.	No longer in effect	April 15, 2020
Iowa	Suspended enforcement of container redemption requirement. ⁴⁴ From March 17 to July 25, 2020, Iowa suspended enforcement of the regulation requiring retailer participation in the state's bottle redemption program.	No longer in effect	March 17, 2020
Louisiana	Extended deadlines caused by personnel shortages. ⁴⁵ If a facility documented a lack of necessary personnel, Louisiana extended most deadlines for periodic monitoring, reporting, and renewal applications by thirty days.	No longer in effect	March 19, 2020
Louisiana	Delayed collection of severance tax from oil & gas producers. ⁴⁶ Louisiana delayed collection of severance taxes imposed on oil & gas produced in the state until June 25, 2020.	No longer in effect	April 22, 2020
Maine	Delayed ban on plastic bags. ⁴⁷ Maine delayed a new ban on plastic bags until January 2021.	No longer in effect	March 17, 2020
Maine	Suspended enforcement of container redemption requirement. ⁴⁸ Maine suspended enforcement of the requirement that retailers participate in the state's bottle redemption program through April 30, 2020.	No longer in effect	March 18, 2020
Maine	Classified waste-to-energy as recycling for certain products. ⁴⁹ Maine classified the use of certain recyclable materials as fuel for waste-to-energy electricity generation as recycling for the purpose of evaluating recycling progress required by state law.	No longer in effect	March 26, 2020
Maine	Accepted requests for enforcement discretion. ⁵⁰ The Maine Bureau of Air Quality accepted inquiries from facilities unable to meet compliance obligations due to pandemic-related constraints such as personnel limitations or supply chain disruptions.	Not yet rescinded	Date not available
Massachusetts	Suspended enforcement of container redemption requirement. ⁵¹ From March 18 through June 5, 2020, Massachusetts suspended enforcement of the regulation requiring retailer participation in the state's bottle redemption program. Massachusetts announced the resumption of enforcement on May 29, 2020.	No longer in effect	March 18, 2020
Massachusetts	Banned use of reusable bags. ⁵² Massachusetts issued a public health order that bans reusable bags and lifts all municipal bans on plastic bags. The order was rescinded on July 10, 2020.	No longer in effect	March 25, 2020

State	Action	Status	Date
Michigan	Suspended enforcement of container redemption requirement. ⁵³ From March 23 through June 15, 2020, Michigan suspended enforcement of the requirement that retailers participate in the state's bottle redemption program. Michigan announced the resumption of enforcement on June 1, 2020.	No longer in effect	March 23, 2020
Montana	Suspended solid waste inspections. ⁵⁴ The Montana Department of Environmental Quality suspended solid waste inspections of landfills and other facilities.	Not yet rescinded	March 24, 2020
Montana	Accepted requests for compliance and enforcement discretion. ⁵⁵ The Montana Department of Environmental Quality (DEQ) considered and responded to requests for regulatory relief during the pandemic. DEQ is maintaining a list of these requests on its website.	Not yet rescinded	March 31, 2020
New Hampshire	Banned use of reusable bags. ⁵⁶ From March 21 through July 27, 2020, an executive order by the governor of New Hampshire mandated that stores use single-use plastic and paper bags.	No longer in effect	March 21, 2020
New Jersey	Delayed deadline for submitting plans to stop sewage overflow. ⁵⁷ New Jersey delayed the deadline for communities to submit Long Term Control Plans to control sewage overflows until October 1.	No longer in effect	Date not available
New Jersey	Toll deadlines for public notice, review, and final action, and extend reporting deadlines. ⁵⁸ New Jersey tolled deadlines for public notice, agency review, and agency final notice for processing construction permits, permits for coastal development, solid waste utility applications, and municipality flood control applications. These timeframes will be tolled by each day of the state's Public Health Emergency. New Jersey also extended reporting deadlines for municipal recycling systems and electronic recyclers by sixty days. Finally, the deadline for applications to engage in soil and fill recycling will be tolled for the duration of the public health emergency plus sixty days.	Not yet rescinded	May 2, 2020
New Mexico	Suspended penalties for non-producing wells. ⁵⁹ New Mexico temporarily suspended penalties levied on oil and gas wells that cease production on state land.	No longer in effect	April 3, 2020
New York	Exempted emergency construction from environmental review requirements. ⁶⁰ New York's Department of Environmental Conservation exempted emergency construction of facilities to address the pandemic from compliance with the state's Environmental Quality Review Act, as long as environmental harm is minimized.	Not yet rescinded	March 23, 2020
New York	Suspended enforcement of container redemption requirement. ⁶¹ From March 24 to June 3, 2020, New York suspended enforcement of the requirement that retailers participate in the state's bottle redemption program.	No longer in effect	March 24, 2020
New York	Delayed plastic bag ban. ⁶² In response to a lawsuit and the pandemic, New York delayed enforcement of its new ban on plastic bags until October 19, 2020.	No longer in effect	April 16, 2020
New York	Withdrew the Restore Mother Nature Bond Act. ⁶³ The Governor's office made the decision to remove the Restore Mother Nature Bond Act, which would have issued \$3 billion in state bonds for resilience-building measures, from the November ballot. The Act was approved in the 2020 legislative budget session, but was withdrawn because of the budget deficit New York State could be facing due to the coronavirus pandemic.	Not yet rescinded	July 30, 2020 ⁶⁴

State	Action	Status	Date
North Dakota	Suspended regulations requiring non-producing wells to close. ⁶⁵ North Dakota adopted regulations permitting wells to cease production for over a year while crude oil prices remain below \$50 a barrel.	Not yet rescinded	March 24, 2020
Ohio	Suspended PFAS testing. ⁶⁶ Ohio suspended testing for highly toxic per- and polyfluoroalkyl substances.	No longer in effect	March 16, 2020
Oklahoma	Permitted oil and gas wells to stop production. ⁶⁷ Oklahoma permitted oil and gas wells to maintain leases if they cease production, effectively extending the lifetime of the leases.	No longer in effect	April 22, 2020
Oregon	Suspended enforcement of container redemption requirement. ⁶⁸ Oregon suspended enforcement of the law requiring retailer participation in the state's bottle redemption program.	No longer in effect	March 15, 2020
Tennessee	Suspended vehicle emissions testing. ⁶⁹ Tennessee suspended all county vehicle emission testing programs.	No longer in effect	March 24, 2020
Texas	Extended reporting deadlines & loosened signage requirements. ⁷⁰ The Texas Commission on Environmental Quality extended deadlines for reporting requirements and relaxed signage requirements.	Not yet rescinded	March 2020 ⁷¹
Texas	Accepted requests for enforcement discretion. ⁷² The Texas Commission on Environmental Quality considered exercising discretion, on a case-by-case basis, for unavoidable violations of environmental regulations or permit requirements resulting from the pandemic, or where compliance would risk transmission of Covid-19 or impede the pandemic response.	Not yet rescinded	March 18, 2020
Texas	Waived penalties for late royalty payments, and allowed oil and gas wells to suspend operations. ⁷³ The Texas Land Commissioner allowed oil and gas producers drilling on state land to suspend operations for up to six months, which effectively extended leases by the same amount of time. Penalties and interest for late royalty payments were also waived until June 30, 2020.	Not yet rescinded	April 21, 2020
Texas	Expanded underground storage and waived related fees. ⁷⁴ Until December 31, 2020, Texas permitted excess oil to be stored in underground formations besides salt caverns, which are considered best at preventing leaks. Texas also temporarily waived fees and surcharges imposed on operators storing oil underground.	No longer in effect	May 5, 2020
Vermont	Suspended enforcement of container redemption requirement. ⁷⁵ Vermont suspended enforcement of the law requiring retailer participation in the state's bottle redemption program.	No longer in effect	March 18, 2020
Wyoming	Suspended collection of conservation tax from oil and gas producers. ⁷⁶ Wyoming reduced the assessed value of the conservation tax on oil and gas producers to zero until September 30, 2020.	No longer in effect	March 31, 2020

Major cities including New York City and San Francisco also initiated Covid-19 response measures beyond those adopted at the state level, which redirected budget allocations away from environmental protection programs and suspended certain municipal waste programs.

B. Common Justifications for Covid-19 Policies Relaxing Environmental Safeguards

Agencies across all levels of government used a variety of justifications for initiating temporary Covid-19 policies that relaxed environmental safeguards. These justifications primarily focused on the protection of public health and employee safety, budgetary and economic constraints, and limited nonmonetary resources. Some temporary Covid-19 policies, however, lacked any rational justification and instead appeared to use the pandemic as an excuse to provide benefits or reduce burdens for favored industries to favored industries.

1. Protection of Public Health and Employee Safety

Many agencies justified pausing environmental rules by citing the need to safeguard the health of the general public. For example, after guidance from the Centers for Disease Control and Prevention (CDC) highlighted that the virus can live on some surfaces for long periods of time,⁷⁷ many state and local agencies banned reusable bags as a means of limiting the spread of Covid-19 among customers in stores.⁷⁸ Similarly, Colorado and Arizona deferred or waived vehicle emissions testing requirements in order to give people “one less reason to leave their home” so that residents would “practice social distancing” and minimize potential Covid-19 transmission.⁷⁹

Relatedly, a number of agencies across all levels of government initiated temporary modifications to environmental protection programs as a way to protect the health of employees in certain industries. In particular, EPA authorized the suspension of hazardous waste cleanup projects if it determined that continuing such efforts would put cleanup personnel at greater risk of contracting Covid-19.⁸⁰ In keeping with this logic, many state and local agencies adopted policies that suspended bottle redemption programs or restricted use of reusable bags as a means limiting store workers’ need to handle items touched by customers and thereby by reducing potential vectors for the spread of Covid-19.⁸¹ Lastly, BLM allowed oil and gas companies to suspend (and extend) federal land leases on the grounds that operators of these wells would be at risk of contracting Covid-19 if forced to travel to different well sites or work with one another in close quarters in order to keep up production.⁸²

2. Budgetary and Economic Constraints

Agencies also frequently cited financial constraints when justifying pandemic-related policies that compromised certain environmental protections. New York State and New York City, for example, delayed the rollout of several environmental initiatives due to budget constraints. In particular, New York State postponed the introduction of a ballot initiative that would allocate funding toward climate change resilience projects like flood protection infrastructure.⁸³ Voters were originally scheduled to consider the Restore Mother Nature Bond Act in November 2020.⁸⁴ In a press conference, Governor Andrew Cuomo told reporters that it would not be “financially prudent” to dedicate funds to climate change resilience in light of the \$30 billion budget deficit expected in the following two years as a result of the pandemic-related economic downturn.⁸⁵ Similarly, the New York City Department of Sanitation announced in early May that it would suspend curbside composting services so that the City could allocate more funding to “essential safety, health, and shelter, and food security needs.”⁸⁶ New York City also delayed the rollout of its Commercial Waste Zone initiative, which would streamline waste collection systems and reduce garbage truck traffic by 50%. The City justified this move on the grounds that it would allow the waste collection industry and the business community generally to “recover and stabilize” before embarking on such an upheaval.⁸⁷ Lastly, in response to revenue losses resulting from Covid-19, New

York City made emergency budget cuts to a number of initiatives designed to reduce vehicle congestion and promote green transportation alternatives.⁸⁸ The de Blasio administration announced that it would reduce funding for protected bike lane development by \$3 million dollars and would delay allocating money towards its “Better Bus Restart Initiative,” which aimed to improve the efficiency of the City’s bus system and encourage more residents to opt for bus travel over car travel.⁸⁹

3. *Limited Nonmonetary Resources*

Various agencies also justified relaxing environmental policies in response to Covid-19 because of personnel constraints. When EPA announced that it would consider granting waivers to some regulated entities for noncompliance with certain pollution regulations, the agency indicated that a reasonable excuse for some forms of noncompliance would be lack of available staff due to increased rates of employee illness or local social distancing requirements.⁹⁰ EPA anticipated that these personnel issues would potentially delay necessary sampling and analysis procedures.⁹¹ Similarly, Montana granted a number of environmental compliance waivers and delays to mining and manufacturing companies that claimed they were unable to meet certain standards due to reduced numbers of employees and contractors.⁹²

The Nuclear Regulatory Commission (NRC) adopted a number of measures in response to personnel limitations. For example, the Commission permitted facility employees to work longer hours than allowed under current regulations. The measure was justified as a way “to ensure that the control of work hours and management of worker fatigue do not unduly limit licensee flexibility in using personnel resources to most effectively manage the impacts of the COVID-19 [public health emergency] on maintaining the safe operation of these facilities.”⁹³

4. *Covid-19 Policies that Lacked a Clear Justification*

A number of agencies adopted temporary Covid-19 policies that negatively affected environmental protections without a transparent rationale. In perhaps the starkest example, BLM issued guidance allowing royalty rate reductions and lease suspensions for fossil fuel producers without adhering to procedural requirements that usually accompany new policies.⁹⁴ BLM bypassed standard protocol that typically involves review of the new policy by engineers, regulatory officials, agency experts, and lawmakers to ensure that the proposal comports with existing law and is justified. While BLM suggested that the royalty rate reductions would prevent fossil fuel producers from permanently losing recoverable oil and gas, it did not demonstrate how such relief would achieve this objective.⁹⁵

EPA and DOJ took similar actions. EPA issued an internal memorandum in May 2020 that gave companies owing civil penalties an additional 60 days to pay if they could demonstrate that Covid-19 caused them to lose 25% of their profits.⁹⁶ While this built on a 2015 guidance document related to violators’ ability to pay fines,⁹⁷ that earlier policy required extensive documentation. Under the 2020 memorandum, there was no indication that EPA would make such requests.⁹⁸ A month before EPA took this action, DOJ issued letters that delayed the collection of fines from companies violating environmental rules.⁹⁹ Companies like BP Products North America Inc., a subsidiary of the oil and gas “super major” bp (formerly British Petroleum and Beyond Petroleum), were among those that sought relief. Some saw both of these measures as ways to prop up the fossil fuel industry,¹⁰⁰ as neither action was premised on larger economic or public health outcomes.

C. Plans to Phase Out Temporary Covid-19 Policies Varied Considerably

While agencies indicated clear, justifiable end dates for some measures taken in response to Covid-19, there were numerous exceptions. In many instances, end dates that were specified lacked clear justifications. In other instances, agencies implied that concessions would be reversed once the crisis passed or other factors (i.e., budgets) returned to pre-pandemic status. However, in some cases, no end date has yet been given, which creates a risk for harmful rollbacks to persist long after the public health situation improves.

1. *Clear End Dates*

Many of the policies that agencies adopted in response to Covid-19 terminated on specific dates. Some agencies specified end dates at the outset. For instance, when Maine announced that it would delay enforcing new regulations banning single-use bags, it indicated that this delay would remain in effect until January 15, 2021. Other agencies specified an end date for their policies well after they initially went into effect. For example, EPA issued temporary guidance on March 26, 2020 saying it would accept requests for pollution compliance relief from regulated entities, but it did not announce an end date for the program until about three months later, on June 29, 2020.¹⁰¹ In some cases, agencies specified an end date only after receiving criticism and pressure from outside groups. For example, following a lawsuit initiated by several states including New York, California, and Illinois,¹⁰² EPA announced that its temporary policy granting some waivers for noncompliance with pollution regulations would terminate on August 31, 2020.¹⁰³

2. *Phase-Outs Tied to Other Covid-19 Restrictions*

Rather than specifying a particular end date, some agency policies instead indicated that they would terminate when public health metrics improved or local Covid-19 restrictions were lifted. In its guidance indicating that some hazardous waste cleanup projects may be suspended due to Covid-19 concerns, EPA indicated that such concessions would remain applicable as long as local health declarations imposed restrictions that hindered or prohibited cleanup procedures.¹⁰⁴ Similarly, NOAA indicated that it would waive observer requirements for fishing boats in areas where local health declarations related to Covid-19 were in effect.¹⁰⁵ At the state level, Georgia reopened a medical sterilization plant that had been closed because it emitted high levels of carcinogenic chemicals, so that the plant could treat personal protective equipment to meet increased demand. State officials specified that the polluting sterilization plant would remain in operation until the local Declaration of Emergency expired or was terminated.¹⁰⁶

3. *Decisions Tied to Budget Stabilization*

Some temporary Covid-19 policies that diverted funding away from environmental protection programs will likely end when state and local budgets return to standard levels. Governor Cuomo noted that delaying a public vote on the Restore Mother Nature Act was due to pandemic-related budget concerns, and that he would reconsider implementing the requirements of the ballot initiative if New York's financial situation improves.¹⁰⁷ It is also likely that New York City will rectify recent budget cuts that reduced funding for more bike lanes and faster bus service when the City's revenues return to their pre-Covid-19 levels, given that this was cited as the only reason for cutting the funding in the first place.¹⁰⁸

4. *Policies Ended on a Case-by-Case Basis*

A substantial number of environmental protection concessions granted by state and federal agencies in response to Covid-19 were enforced on a case-by-case basis, which suggests that they lasted for varying lengths of time. For example, many state agencies invited individual regulated entities to request tailored exemptions from certain pollution compliance standards. CalEPA indicated that it would grant specific concessions depending on the degree of hardship suffered by the requesting entity.¹⁰⁹ Similarly, the Texas Commission on Environmental Quality encouraged individual regulated entities that requested waivers from environmental regulations to indicate the “[a]nticipated duration of need for enforcement discretion.”¹¹⁰ At the federal level, FERC granted some requests from interstate oil pipeline operators to temporarily alter routes, delay reporting and filing requirements, and change flow direction.¹¹¹ Individual operators were encouraged to reach out to FERC to request temporary waivers or extensions based on the specific nature of their issues, which FERC would then consider approving at its discretion.¹¹² Furthermore, BLM granted royalty rate reductions and lease suspensions to individual oil and gas companies on a case-by-case basis. While BLM announced that these suspensions and rate reductions would last for a set period of 60 days from the date that each request was received, it also indicated that it would consider granting extensions without requiring public notice or reapplication. This suggests that different entities received relief for varying lengths of time at the discretion of BLM under its opaque extension policy.¹¹³

5. *Some End Dates Were Not Clearly Explained or Justified*

Many agencies did not clearly articulate whether or why their pandemic-related policies would remain in effect for specific periods of time. For example, states like California, Connecticut, and Maine chose particular end dates for their policies relaxing or delaying restrictions on single-use plastic bags without justifying why such end dates made sense in connection to the public safety threats posed by Covid-19.¹¹⁴ Similarly, EPA did not refer to public health, safety, or environmental considerations when discussing why it chose a 180-day period for its temporary policy that relaxed emissions reporting requirements for regulated entities. Instead, EPA indicated that a clear end date for this temporary policy was necessary to provide “certainty” to regulated entities, but did not explain why this particular time frame was best suited to achieve its goals compared to a shorter period.¹¹⁵ Furthermore, agencies largely did not publicize protocols for reassessing or reevaluating Covid-19-related concessions and rollbacks, including potential timeline adjustments to address changing circumstances.

EPA did not refer to public health, safety, or environmental considerations when discussing why it chose a 180-day period for its temporary policy that relaxed emissions reporting requirements for regulated entities.

6. *Policies with Uncertain End Dates*

As discussed above, agencies sometimes did not specify clear end dates when they issued pandemic-related policies, and some of these actions remain in effect. For example, agencies have not made it clear when they will stop granting waivers for certain regulatory requirements. This appears to be the case for the FERC policy, discussed above, allowing certain waivers and extensions for pipeline operators.¹¹⁶ It is unclear what plans agencies have, if any, for the many policies that have not yet been rescinded and have no set end date. For example, the memorandum from EPA on suspending field work at Superfund sites only says that regional offices should “monitor site conditions and plan the logistics for resuming field work when appropriate.”¹¹⁷ There is no directive about when offices should recommence suspended field work. Without adequate agency attention, some policy changes that compromise environmental protection could slip through the cracks and remain in place after their ostensible purpose has become invalid.

II. Types of Policy Changes and Their Effects

This section examines the broad categories of measures agencies in the environmental sphere took in response to Covid-19 and the likely effects of those policies. As noted in Section I, the agencies seemed to target environmental policies that fit into one of three buckets: royalty and leasing requirements for fossil fuel producers, pollution monitoring and reporting, and municipal waste management programs. The full effects of most of these policy changes are unclear, but some trends are evident. For instance, reduced enforcement of pollution restrictions likely led to higher levels of pollution and associated adverse health and environmental outcomes. Similarly, removing barriers to oil and gas extraction, such as through suspending or reducing royalty payments, created incentives for fossil fuel companies to pursue additional extraction.

A. Types of Programs Generally Targeted

Pandemic-related agency actions with potentially adverse environmental effects generally fell into a few main categories. First, agencies offered financial relief to fossil fuel producers and waived certain leasing obligations for oil and gas companies. Second, agencies loosened many requirements related to air and water pollution. Third, agencies at the state and local level suspended or delayed municipal waste programs designed to reduce excess waste or encourage recycling.

1. *Royalty and Leasing Requirements for Oil and Gas Producers*

Both federal and state agencies responded to Covid-19 and the related slowdown of the oil and gas industry by alleviating royalty and leasing obligations for many companies engaged in extraction. Despite an enormous drop in fuel demand,¹¹⁸ BLM encouraged oil and gas companies to continue drilling on federal lands in exchange for royalty reductions if they could demonstrate that Covid-19 caused them economic hardship.¹¹⁹ In particular, BLM slashed royalty rates for some oil and gas producers at onshore federal land sites from 12.5% of revenues to between 2.5% and 5% of revenues.¹²⁰ BLM also indicated that it would consider dropping the royalty rate as low as 0.5% in some cases.¹²¹ Some state programs also offered oil and gas producers similar fee relief for operations on private lands. For example, Louisiana suspended the tax it usually imposes on oil and gas production through June 25, 2020, and Texas waived penalties and interest rates on late royalty payments submitted through June 30, 2020.¹²²

In response to the pandemic, BLM slashed royalty rates for some oil and gas extraction from 12.5% of revenues to between 2.5% and 5% of revenues.

In addition to granting royalty and tax reductions, state and federal agencies also assisted oil and gas producers by suspending some lease obligations, allowing these companies to pause and extend their leases. Under the *force majeure* clause of the Mineral Leasing Act, oil and gas producers on federal lands can request lease suspensions from BLM, which allows them to pause their 10-year lease terms for up to one year while they temporarily halt production.¹²³ Recent suspensions have allowed some fossil fuel producers to extend their lease terms and maintain their leases despite failing to meet contractually required production quotas.¹²⁴ New Mexico adopted a similar policy by allowing local oil companies to temporarily stop production without losing their leases.¹²⁵ While BLM has not publicly indicated how many requests for royalty and lease relief it granted due to Covid-19, by the end of May 2020 various oil and gas companies had petitioned BLM for hundreds of these concessions.¹²⁶ As a result, the American public may have lost out on millions of dollars

in revenue from publicly owned natural resources. In addition, measures like lease suspensions could push extraction farther out into the future, potentially increasing overall extraction and related environmental damages.

2. *Pollution Monitoring and Enforcement*

Many agencies also adopted policies in response to Covid-19 that eased regulations primarily designed to limit air and water pollution by regulated industries. For example, EPA temporarily suspended pollution monitoring and enforcement activities. The agency announced that if Covid-19 interfered with a regulated entity's ability to carry out routine compliance and reporting operations, EPA would not enforce the following:

- (1) violations of “compliance monitoring, integrity testing, sampling, laboratory analysis . . . and reporting or certification obligations” by any entities it oversees;
- (2) violations of routine reporting and milestone requirements under settlement agreements with EPA;
- (3) noncompliance with air emission and water discharge requirements under certain (unspecified) circumstances;
- (4) violations of hazardous waste storage timeframe requirements; and
- (5) failure by public water systems to monitor drinking water for some contaminants (excluding those that posed “acute risk”).¹²⁷

While EPA has not disclosed the full scope of the concessions it granted to regulated entities under this temporary enforcement and compliance program, it did announce in a letter to lawmakers that roughly 300 facilities relied on the program to skip water discharge monitoring reporting typically required under the Clean Water Act.¹²⁸

Additionally, NHTSA issued an interim final rule in early 2021 that delayed an adjustment of penalty amounts for auto manufacturers that fail to comply with corporate average fuel economy (CAFE) standards.¹²⁹ NHTSA originally adjusted penalties for non-compliance from \$5.50 to \$14.00 beginning in model year 2019 pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements (the 2015 Act).¹³⁰ During the Trump administration, the agency attempted to suspend the adjustment and rescinded it, but both actions were vacated in court.¹³¹ Under the 2021 interim final rule, the Trump administration once again sought to put off the adjustment so that auto manufacturers would not see a penalty increase until model year 2022.¹³² NHTSA justified this decision to delay the CAFE standard non-compliance penalty increase in part because of the economic burden suffered by the auto industry as a result of Covid-19.¹³³

Some states adopted similar temporary policies granting discretion to agencies to determine whether to enforce pollution compliance requirements if violations could be justified in connection with Covid-19 restrictions or precautions. Maine's Bureau of Air Quality indicated that it would consider whether or not to enforce compliance violations “beyond [a] facility's control” on a case-by-case basis. The Montana Department of Environmental Quality (Montana DEQ) also said it would consider upon request whether or not to grant regulated entities “flexibility” with respect to certain regulatory compliance standards because of Covid-19 complications. Between March and September 2020, Montana DEQ approved every single petition it received requesting a waiver from compliance obligations, most of which were submitted by mining companies.¹³⁴ As a result of these waivers, Montana DEQ temporarily allowed mining companies to (1) delay groundwater monitoring,¹³⁵ (2) postpone inspection of tailings storage facilities,¹³⁶ and (3) suspend wildlife surveys intended to ensure protection of threatened and endangered species.¹³⁷ Montana DEQ also allowed a manufacturing company to postpone source testing for particulate matter.¹³⁸

Some state agencies issued temporary policies in response to Covid-19 that adversely affected initiatives designed to reduce water pollution. For example, the Ohio Environmental Protection Agency halted a new initiative to test state water systems for harmful “forever chemicals,” which it began implementing just a few weeks before the pandemic hit.¹³⁹ The New Jersey Department of Environmental Protection cited Covid-19 as its reason for granting municipalities a four-month extension to submit plans to prevent sewage overflow into state waterways during heavy rainfall.¹⁴⁰ These sewage overflow prevention plans were originally due on June 1, 2020.¹⁴¹

Beyond issuing pollution compliance concessions for regulated entities, a number of states also relaxed vehicle emissions testing requirements for residents. For example, Arizona allowed vehicle owners aged 65 and above to renew their vehicle registration online without immediately completing the emissions test typically required for renewal. Similarly, Tennessee residents renewing their vehicle registrations between March 12 and May 31, 2020 were permitted to do so without obtaining an emissions certificate.¹⁴² Going one step further, Colorado waived all vehicle emissions testing requirements for its residents indefinitely.¹⁴³

3. *Municipal Waste*

At the state and local level, many agencies responded to Covid-19 by modifying municipal waste programs designed to reduce excess waste and pollution. For example, California and Connecticut both suspended state laws imposing recycling requirements on municipalities and retailers.¹⁴⁴ In California, for a period of 120 days, retail establishments selling bottled drinks to consumers were excused from a regulation requiring them to collect and deliver empty bottles to recycling plants.¹⁴⁵ In addition, California temporarily waived laws imposing minimum operating hours on recycling plants.¹⁴⁶ Similarly, Connecticut indicated to retailers that it would no longer sanction them under the “bottle bill” for failing to accept empty beverage containers through June 3, 2020.¹⁴⁷

A number of agencies also temporarily blocked recent laws designed to limit consumption of single-use bags. Some states and cities including California, Maine, New York, and Philadelphia suspended or delayed laws that prohibited retailers from providing single-use bags to customers.¹⁴⁸ Maine further specified that its temporary protocol allowing single-use bags would preempt municipal regulations, thereby preventing local communities from using more environmentally protective single-use bag procedures.¹⁴⁹ In an even more extreme move, Massachusetts, New Hampshire, and San Francisco banned reusable bags entirely, which effectively forced consumers and retailers to rely exclusively on single-use bags.¹⁵⁰ Connecticut and San Jose also encouraged consumption of more single-use bags by lifting regulations requiring retailers to charge a 10-cent tax on plastic and other carry-out bags.¹⁵¹

B. **Effects of Covid-19 Concessions**

Agency actions initiated in response to Covid-19 have led to a number of adverse effects. First, polluter noncompliance skyrocketed in response to federal and state initiatives that waived pollution-related standards and requirements. As a result of elevated polluter noncompliance, many communities have suffered from adverse public health effects. Royalty rate reductions and lease suspensions for oil and gas producers have also increased incentives for fossil fuel production while depleting revenue for federal and state governments. While some of these adverse effects have been studied and quantified, many agencies’ lack of transparency about the details of their temporary policies has made it difficult to comprehensively assess the full scope of the resulting effects.

1. *Polluter Noncompliance*

Pollution reporting plummeted in 2020 as a result of temporary agency actions that waived certain pollution compliance requirements for regulated entities. At the federal level, this has been a dramatic trend even though relatively few entities formally sought an exemption under EPA's temporary policy granting pollution reporting waivers.¹⁵² Over the course of March and April 2020, facilities required to test smokestack emissions under the Clean Air Act conducted 40% fewer tests compared to these months in 2019.¹⁵³ Similarly, even though only 325 entities required to submit water discharge monitoring reports under the Clean Water Act requested waivers from these filings under EPA's temporary Covid-19 policy, nearly 16,000 facilities failed to complete them.¹⁵⁴ Even though this reflects a longer-term trend in industry non-compliance and insufficient EPA enforcement,¹⁵⁵ EPA's suspension of such reporting may have been seen as a signal that critical rules designed to protect public health could be ignored without consequence. Following the EPA's lead, state environmental agencies also granted more than 3,000 waivers from various environmental requirements to regulated entities,¹⁵⁶ further eroding the effectiveness of these safeguards.

Beyond simply failing to comply with typical pollution reporting requirements, regulated entities are also polluting at higher rates as a result of EPA's temporary policy.¹⁵⁷ For example, one study shows that after EPA announced its temporary policy relaxing pollution enforcement requirements for regulated entities, areas with six or more facilities required to report toxic emissions to EPA saw a 14% spike in levels of particulate matter pollution.¹⁵⁸

2. **Adverse and Disparate Public Health Effects**

Decreased pollution reporting and compliance will likely result in adverse effects on Americans' health.¹⁵⁹ Many of the regulated entities subject to emissions standards and reporting requirements emit pollutants known to cause higher rates of cancer, low birth weight for infants, impaired cognitive development, diminished cardiovascular health, and premature death.¹⁶⁰ Given that these industrial air pollution sources have been releasing higher levels of toxic emissions since EPA enacted its temporary Covid-19 policy,¹⁶¹ the incidence of these adverse human health complications will also likely increase.

Beyond exacerbating these health problems, hazardous air pollution has also been linked to higher rates of Covid-19 and related deaths.¹⁶² This aligns with existing research indicating that higher levels of air pollution correlate with increases in other respiratory illnesses like bronchitis, asthma, and pneumonia.¹⁶³ In particular, small increases in PM_{2.5}, a pollutant commonly emitted by industrial sites covered by EPA's temporary policy, have been linked to a 15% increase in Covid-19 death rates.¹⁶⁴ Furthermore, counties in close proximity to six or more major air pollution sites saw a 53% increase in daily Covid-19 cases after EPA's temporary enforcement relaxation policy went into effect.¹⁶⁵

Counties in close proximity to six or more major air pollution sites saw a 53% increase in daily Covid-19 cases after EPA's temporary enforcement relaxation policy went into effect.

EPA's relaxed pollution enforcement will almost certainly have environmental justice implications, as the resulting long-term health problems and Covid-19 complications will likely disproportionately affect low-income and minority communities. First, major industrial pollution sites covered by EPA's temporary policy are disproportionately located near residential areas with higher percentages of low-income and minority groups.¹⁶⁶ Second, low-income and minority communities are more likely to contract Covid-19 and suffer from related complications due to other factors like diminished

health care access, essential-worker status, and more crowded housing conditions.¹⁶⁷ Combined, closer proximity to major pollution sites and other elevated Covid-19 risks suggest that EPA's temporary policy will disproportionately harm low-income and minority communities.¹⁶⁸

3. Incentives for Fossil Fuel Extraction

Federal and state agency actions providing temporary relief to fossil fuel producers in response to pandemic-related economic hardship have encouraged these companies to continue extracting oil and gas despite a glut in global supply.¹⁶⁹ At the federal level, BLM facilitated ongoing fossil fuel extraction by slashing royalty rates for oil and gas producers that claimed that Covid-19 caused them to suffer economic hardship.¹⁷⁰ Some commentators argue that this approach did little to help operators, many of which struggled to remain profitable even after receiving fee waivers.¹⁷¹ Instead, producers might have been better served by a coherent BLM policy that encouraged them to suspend operations entirely.¹⁷² At the state level, agencies have continued to process fossil fuel producers' applications for permits, authorizations, and licenses to operate, despite limiting routine inspections and other oversight measures.¹⁷³ Continued fossil fuel extraction coupled with reduced oversight will likely lead to negative health impacts and related socioeconomic consequences for communities located near these production sites.¹⁷⁴

4. Public and Private Land Revenue Losses

Temporary state and federal agency actions that provided financial relief for fossil fuel producers also likely reduced crucial revenue streams for states and the federal government. Approximately half of royalty fees paid by fossil fuel producers with operations on federal lands are distributed to the states where those extraction sites are located.¹⁷⁵ In 2019, the federal government collected over \$8 billion dollars in total royalty payments, meaning states received roughly \$4 billion dollars.¹⁷⁶ States that receive these royalty payments typically direct them towards local government services like public schools. By slashing royalty rates for fossil fuel producers operating on federal lands, BLM reduced state revenues by approximately \$2.25 million dollars.¹⁷⁷ While these temporary policies could have also had a countervailing effect by encouraging more extraction, taxpayers and states almost certainly did not receive fair-market value for public resources under this policy. State-level actions in Louisiana, New Mexico, Texas, and Wyoming that similarly reduced royalty rates and lowered or suspended penalty fees for oil and gas producers also likely reduced revenues used for public services.¹⁷⁸

5. Insufficient Disclosure Complicates Assessment of Many Temporary Policies

Particularly at the federal level, some agencies that offered concessions have not revealed how many requests for relief they granted to regulated entities. For example, EPA did not make publicly available any comprehensive data regarding the scope or effects of its temporary policy that waived certain pollution compliance and testing requirements for regulated entities.¹⁷⁹ While EPA indicated that it received approximately 300 formal requests from regulated entities to waive water pollution discharge reports typically required under the Clean Water Act by July 2020, it did not provide any details regarding which entities requested relief and what specific reporting requirements they avoided.¹⁸⁰ Similarly, BLM did not disclose how many royalty rate reductions and lease suspensions it granted to oil and gas producers under its temporary Covid-19 policy.¹⁸¹ Without more publicly available information on these actions, it is nearly impossible to assess the resulting impacts.

III. Taking Stock and Moving Forward

A. A Lack of Transparency and Information Clouds the Full Effects of Temporary Covid-19 Policies

Because of the lack of transparency surrounding many of the temporary agency actions initiated in response to Covid-19, taking stock of the full scope of the resulting environmental effects is difficult. First, as discussed above, many of these agencies have not disclosed detailed information regarding the requests for relief they received and how many of these were approved.¹⁸² Furthermore, even when agencies have made such records publicly available, they have not indicated how they will use this information going forward. For example, Montana has maintained a running list of entities seeking requests for pollution compliance concessions and Montana DEQ responses. But officials have not suggested that they will take any future steps to address the resulting environmental effects.¹⁸³ Second, many of these agency actions lacked well-defined timelines, suggesting that it will be hard to determine how long they remained in effect and assess related damage. For example, some temporary policies relaxing compliance and monitoring requirements depended on the continuance of other Covid-19 protocols like social distancing requirements or essential worker definitions, which may change often and are therefore difficult to track.¹⁸⁴ As an illustration, New York State contains over one hundred Superfund sites, which are polluted locations where EPA has mandated cleanup of hazardous materials.¹⁸⁵ Under EPA's interim guidance, Superfund sites were encouraged to suspend onsite operations that violated local Covid-19 health declarations limiting in-person activities.¹⁸⁶ Between March 12, 2020 and March 30, 2020 alone, Governor Cuomo issued 13 separate executive orders modifying various local regulations in order to limit in-person activities in response to Covid-19, often without specifying when such modifications would be phased out or updated.¹⁸⁷ Information on the duration and details of suspended Superfund work have not been provided by EPA,¹⁸⁸ and similar information gaps exist for many other pandemic-related policy concessions.

B. How Agencies Should Proceed with Remaining Policy Concessions

Now that the worst of the pandemic is beginning to recede, agencies should analyze the effects of their temporary Covid-19 policies, including intended public health or financial benefits and unintended environmental consequences. Agencies should also quickly develop a timeline for repealing any remaining temporary Covid-19 policies, based on an analysis of the key costs and benefits associated with each policy. In addition to facilitating the reinstatement of environmental safeguards, agency analyses can aid the design of guidelines for actions under future emergency situations.

1. *Agencies Should Analyze the Effects (Both Intentional and Unintentional) of Temporary Covid-19 Policies*

Conducting thorough analyses of pandemic-related policy changes will help agencies improve decisionmaking when faced with similar pressures in a future crisis. First and foremost, agencies should attempt to quantify the extent to which their temporary Covid-19 policies achieved their stated goals. For example, an agency that provided financial relief for oil and gas companies in the form of royalty rate reductions or lease suspensions should assess whether this policy created benefits for the public or avoided damaging economic ripple effects, rather than merely helping particular companies weather short-term financial hardships. Agencies should also evaluate whether actions designed to limit the spread of Covid-19 by reducing person-to-person contact seem to have helped reduce virus transmission.

Second, agencies should assess the other key effects these temporary Covid-19 policies have had. This may include quantifying increased air and water pollution levels due to temporary enforcement concessions, or determining the long-term effects of vehicle emissions testing suspensions. These findings should be made public as soon as they are available. If agencies assess whether their environmental policy concessions achieved their goals and/or had adverse outcomes, decisionmakers will be better able to determine what types of policies to pursue in the future, what types of policies to avoid, and what safeguards must remain in place for the public good.

2. *Agencies Should Weigh Key Costs and Benefits, and Restore Temporarily Weakened Policies as Quickly as Possible*

Agencies should assess several important factors in evaluating when to restore a policy that has been suspended or weakened due to Covid-19 (or a comparable future crisis). Many concessions should be reversed before the Covid-19 crisis has completely ended, once risks have receded to a reasonable level.

Because many temporary Covid-19 policies have had unclear or unintended consequences like increased pollution or adverse public health effects, agencies should reinstate policies designed to control pollution, including any paused monitoring requirements, as soon as possible. As discussed above, suspending monitoring and reporting requirements likely led to increased levels of pollution and associated environmental and public health harms. Reinstating monitoring requirements may also enable agencies to better understand the impacts of these policy changes. Information gathered from reinstated pollution monitoring, for example, could help agencies determine the level of harm caused by a concession, assuming firms have not quickly reverted to pre-pandemic levels of pollution. Any information that agencies can glean about what harmful effects a particular concession has had could be weighed against the degree of Covid-19 risk if the status quo is restored. With information about the intended and unintended consequences of Covid-19 policy changes, agencies can assess whether the benefits of such policies outweigh the costs.

In particular, an agency may want to immediately restore a weakened policy if it finds that:

- (1) Substantial benefits from the original pre-Covid-19 policy have been forgone;
- (2) The public health landscape has improved enough to reduce major risks;
- (3) Budget or economic constraints have diminished;
- (4) The temporary policy has led to significant distributional concerns, such as outsized impacts on particular communities; or
- (5) The alleged risk associated with the pre-Covid-19 policy has either been diminished or disproven.

In cases where temporary policies did not have the intended effects or were based on unsubstantiated justifications, agencies should reinstate the original policy as soon as possible. For example, if BLM determines that certain royalty rate reductions or lease suspensions meant to aid fossil fuel producers did not alleviate broader economic concerns, or that such concessions were not clearly justified, BLM should stop providing such relief. Similarly, if researchers determine that Covid-19 does not remain viable on cloth surfaces or that reusable bags do not pose any risk of spreading the virus, states that have not already repealed their temporary policies restricting reusable bags should do so.

Agencies will need to balance these different factors against one another and identify their unique priorities in order to make informed decisions.

C. Agencies Should Design New Guidelines for Responding to Future Public Health Crises, Prioritizing Transparency

Important lessons can be learned from Covid-19 and the emergency responses initiated by agencies across all levels of government. After agencies have reviewed their temporary policies and disclosed the details of relevant direct and indirect impacts, they should establish new frameworks to effectively respond to future public health crises, working to prioritize transparency.

The following recommendations can help policymakers improve the effectiveness, flexibility, and transparency of crisis responses. Agencies should implement these recommendations both now, as they continue to grapple with Covid-19, as well as in the future, whenever unexpected health and safety emergencies arise.

In order to respond more effectively and efficiently to future public health crises, agencies should preemptively adopt guidelines that ensure any future responsive measures promote resilience and are undertaken transparently. Such guidelines should prioritize the following issues:

Establishing a clear rationale – In order to maximize accountability and maintain public trust, agencies should identify a clear rationale for adopting a particular policy response at the time it is announced. If the specific aim of a temporary policy is not clear, an agency may struggle to evaluate the appropriate time to lift the policy and restore baseline safeguards. The public may also lose confidence in an agency if concessions appear to be granted to regulated entities in an ad-hoc manner.

Conducting ongoing evaluations of temporary policies – Agencies should publicly disclose how their policy responses are being implemented, and perform due diligence to ensure that their actions are achieving stated goals. It is critical for agencies to gather all relevant data to inform these evaluations, including the

A framework for constructing crisis-resilient policies

Agencies tasked with reacting to public health crises can be guided in part by the frameworks designed to promote resilient and adaptive responses to future climate change impacts. For example, in crafting guidelines for crisis response, agencies may want to adopt protocols in advance that (1) promote systems thinking, (2) create opportunities to change course, and (3) maximize accountability in the face of a new threat.¹⁸⁹

A systems-thinking approach encourages policymakers to take into account how a change to one system component can lead to changes to other system components. In the Covid-19 context, for example, this approach would push EPA to consider how relaxing air pollution compliance requirements may lead to other unintended public health consequences and respiratory issues.

Given the high level of uncertainty associated with most public health crises, agencies should incorporate regular evaluation procedures into their policy responses, making it easier to adapt policies to fit new information and new developments. These opportunities to change course should be clearly articulated at the outset, and agencies should base their decisions on the best available science and data.

Agencies should also prioritize accountability measures when taking emergency actions. They should articulate clear goals for their actions, establish timelines for reevaluation, create plans to monitor related effects, and work to create easy opportunities for public input and communication. If agencies do not take such measures, it is difficult to hold them accountable to the populations they serve.

implementation details (such as the number of entities granted relief and the specifics of such relief); the extent to which the short-term goals are being met (such as evidence of reduced virus exposure or financial impacts of the policy change); and any direct or indirect consequences of the temporary actions (such as evidence of increased pollution).

Establishing clear timelines for review – Agencies should determine clear timelines for their temporary policy responses and specify when such policies will be reviewed and, if prudent, modified or repealed. Public health crises follow unpredictable patterns and timelines, so it is important for agencies to maintain flexibility while providing both the public and regulated entities a clear understanding of how and when temporary policies will be reevaluated. Setting timelines for regular reevaluation processes can also ensure that public safeguards are restored as soon as it is safe to return to the status quo, reducing the risk of adverse consequences.

Resilience funds – Agencies should also consider establishing resilience funds that they can use when a crisis emerges so that funding need not be allocated away from other important initiatives. While it will be challenging to foresee the types and levels of resources needed for future crises, resilience funds can create an important buffer to reduce the chance that critical environmental protection programs (or other programs) will be halted due to budget shortfalls.

IV. Conclusion

Covid-19 has led to unprecedented changes in the way we operate as a society. Agencies across all levels of government have responded to this crisis by enacting temporary policies designed to reduce health risks and preserve the economy. Unfortunately, some of these temporary policies have come at the cost of environmental protection. Understanding the nature and scope of these adverse environmental effects is necessary so that agencies can determine what steps need to be taken to restore the status quo and reverse detrimental impacts. Furthermore, agencies should take stock of these lessons so they can create preemptive policies that facilitate more efficient, effective, and transparent responses to future health crises.

Endnotes

- ¹ See INSTITUTE FOR POLICY INTEGRITY, TRACKER: WEAKENED ENVIRONMENTAL LAWS AND POLICIES IN RESPONSE TO COVID-19, <https://perma.cc/3ACZ-H4U9> (last updated Mar. 17, 2021).
- ² See, e.g., Memorandum from U.S. Env't Prot. Agency to All Governmental and Private Sector Partners (Mar. 26, 2020), <https://perma.cc/Q9PF-CPAQ>.
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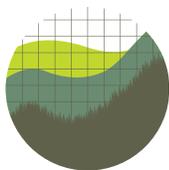
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