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COVID-19/U.S. Environmental Protection Agency Temporary Policy Regarding Enforcement Discretion: Nine State Attorney Generals File Judicial Challenge

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Nine State Attorney Generals filed a May 13th Complaint in the United States District Court for the Southern District of New York challenging the United States Environmental Protection Agency's ("EPA") memorandum ("*Memorandum*") addressing "*Temporary COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program.*"

A previous blog post describing the *Memorandum* can be found [here](#).

The State Attorney Generals (collectively "State AGs") filing the Complaint include:

- 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
- Commonwealth of Virginia

The *Memorandum* was stated to have been prepared as the agency's response to the COVID-19 pandemic and its effect on the regulated community. Its purpose is described as providing regulatory relief to affected facilities while maintaining environmental protection.

The arguments articulated in the State AG's Complaint include:

- The Memorandum is overly broad, lacks transparency and accountability
- Higher pollution emissions by industry will result with corresponding impacts on public health and the environment
- EPA lacks the legal authority to effectively waive critical monitoring and reporting obligations
- Failure to consider the adverse impacts on public health that the policy will have amidst the pandemic
- States' informational interest are injured

A copy of the Complaint can be downloaded [here](#).