

COMMENTS ON EPA'S CENSORED SCIENCE PROPOSAL

"Strengthening Transparency in Regulatory Science"

August 14, 2018

Reversing decades of accepted scientific practice, on April 30, 2018, EPA issued a [proposal](#) that would curtail the agency's ability to rely on well-documented scientific studies when it makes major decisions about how to protect public health and the environment. This proposal has broad ramifications, effectively targeting, among other things, health and safety protections developed under the Clean Air Act, including the National Ambient Air Quality Standards for lead and for fine particulates. The impacts of this devastating proposal, should it be finalized, will fall on the most vulnerable in our country, including children (whose lungs are only just developing), asthma sufferers, older Americans, and people with heart and lung disease.

When a federal agency proposes to make such massive changes, it has a legal obligation to explain clearly the purpose of the changes and justify them, following well-established legal standards. This proposal completely fails to make the case for why the changes are needed.

Instead, the extremely abbreviated proposal presents its proposed changes as if they were a simple matter with a simple answer. More than a third of the proposal is posed as a set of questions rather than explanation or justification. In fact, the proposal takes potential commenters from all perspectives down a rabbit hole, opening a complex series of questions about how science is performed and used at EPA and across the government in decision-making. It fails to grapple with a long history of scientific practice that has been affirmed by multiple courts.

The proposal's thin justification is found in vague references to a well-established trend within academia and government agencies to help the public better understand how science is used in decision-making. Simply associating itself with this important movement and appropriating terms and phrases like "transparency" and the "public's ability to understand and meaningfully participate in the regulatory process," is different than actually addressing the complexity of increasing openness in science. The proposal seeks to exploit a legitimate ongoing debate within the scientific community with the apparent aim of disrupting the role of science in agency processes rather than improving it. Ostensibly the proposal seeks greater transparency, but its authors know (and likely intend) that the most likely result will be the exclusion of important scientifically valid research from consideration. Tellingly, one result would be a different standard for the use of science when the agency seeks to regulate industry vs. when industry seeks benefits from EPA.

If the administration had a genuine interest in implementing principles of transparency and greater public understanding, it would have written a full and clear proposal that explains its proposed approach and all consequences. Instead, it has avoided providing meaningful content or definitions. We can only conclude that objective science has become inconvenient. The proposal seems a way to avoid using impartial, peer-reviewed studies as they have been used for decades, couched in generalities designed to create confusion.

Finally, this proposal appears to be part of a broader effort to marginalize science in EPA decision-making, stack the deck against its consideration, and generally undercut EPA's capacity to enact protections for health and the environment. A few examples include: preventing scientists who have received EPA grants from serving on the agency's Science Advisory Board, while industry-tied representatives may, tipping the balance on what is intended to be an independent scientific body; a separate effort to favor computations of costs of agency action over benefits in the context of cost benefit analyses; other efforts to weaken National Ambient Air Quality Standards (NAAQS) that protect the air Americans breathe. The net effect will be weaker public health and environmental protections and fewer protections against polluters.

KEY POINTS IN EPN'S COMMENTS ON THE PROPOSAL:

- EPA's proposal reverses almost fifty years of unbroken EPA practice of evaluating all scientific studies relevant to a regulatory decision on their individual scientific merits, giving each study the weight its merits deserve. The proposal would categorically eliminate the use of any study on the sole basis that the raw data cannot, for whatever reason, be made public. It would inevitably diminish the overall quality of the scientific analyses supporting EPA decisions. Implicitly recognizing its deficiencies, the rule allows for case-by-case waivers but without standards for picking and choosing among exemption requests.
- A serious proposal would have explained or identified how the rule would be implemented; what its effect will be; and the statutory provisions the rule would affect. It would have specifically named any research it would eliminate from decision-making and explain the proper uses of science and how the proposed rule measures up. The current proposal does none of that.
- The proposal is legally defective because the public is not provided adequate notice of its intent or effects. It fails to show that the restrictions it imposes on using reliable information under statutes protecting the American public from air, land and water pollution are allowable under those statutes. It fails to meet the agency's legal responsibility to be clear when it plans to change how it implements eight EPA statutes. The agency cannot arbitrarily exclude a class of studies. It certainly cannot do so without clearly explaining its logic and legal justification in a way that allows the public to provide informed comments.
- The proposal is internally inconsistent. For example, it does not explain why specified science cannot be considered in "major rules" but can be considered in minor rules and in individual decisions such as setting limits in air and water permits for major industrial facilities, standards for hazardous waste cleanups, registration or re-registration of pesticides, approval for market of new chemicals or setting tolerances for pesticide residues on food.
- There are serious and proven methods for evaluating the quality of scientific information. EPA historically has adopted and follows those procedures and norms in its decision-making. Its practice is consistent with widely used practice in the scientific community and by other agencies, as well as Office of Management and Budget (OMB) guidance. These include reanalysis of data sets, examining researchers' potential for conflicts of interest, using peer review to assess the strengths and weaknesses of the design and analysis of individual studies, a weight-of-evidence approach that considers multiple lines of scientific evidence (not just a single study) and public comment. In fact, OMB has issued guidelines for all government agencies about how to implement the Information Quality Act, which ensures and maximizes the quality, objectivity, utility and integrity of information disseminated by federal agencies. OMB guidelines do not require agencies to provide unrestricted public access to all underlying raw data as a precondition for consideration of a study. The proposal fails to mention or grapple with any of this highly pertinent history.
- The proposal suggests that some of its 24 footnotes provide legal support for its planned action. Commenters must figure out for themselves the agency's rationale by looking up the cited authorities and deciding what the footnotes mean and how, if at all, they might justify such revolutionary changes in EPA practices. In fact, these references do not support the EPA proposal and totally fail to explain the legal and policy support for the proposed changes.

Link to summary and full comments:

<https://www.environmentalprotectionnetwork.org/censored-science-comments/>

For more information, please email EPN at info@environmentalprotectionnetwork.org or call 202-656-6229. Visit EPN's website at www.environmentalprotectionnetwork.org.