

EPN “All Hands” Call, Friday, March 20, 2020

This month's all-hands call discussed the supplement to the “censored science” rule and EPA’s Superfund Program.

“Censored Science”

Michael Halpern of the Union of Concerned Scientists provided an overview of the supplement to the “censored science” rule and its potential ramifications.

On March 18, 2020, the EPA published a supplemental notice of proposed rulemaking to its Strengthening Transparency in Regulatory Science or “censored science” proposed rule. The supplemental rule would broaden the scope of the original rule, removing thousands of credible scientific papers from consideration that don’t make their raw data public, and changing how EPA does scientific assessments and makes regulatory decisions.

The supplemental rule is incomplete, with no articulation of the problem that the rule is addressing, how it enables EPA to meet its mission, or how it saves money (CBA noted it would cost \$250 million annually in compliance). It would give the administrator vague discretion to pick and choose which scientific reports to exempt from the rule and allow to be considered in the rulemaking process. This would in turn politicize science, reduce agency effectiveness, slow down agency work, and erode the public trust in EPA. There is also a concern that this rule could hamper the response to coronavirus, as air pollution research, which could help identify vulnerable populations would be stifled.

All are encouraged to provide public comment by April 17, and UCS has developed a [comment guide](#) and is providing comment assistance to [those who sign up here](#). In addition, to help demonstrate the inadequacy of a 30-day comment period with no public hearings during a pandemic, the Union of Concerned Scientists will hold a [virtual public hearing](#) on the supplemental rule April 14th; you can [sign up to provide oral comment](#). If you do not have capacity to comment, please consider putting a note in the federal register identifying what you would comment on but are unable to due to the short time frame. Note that all comments must directly respond to the supplemental rule, not the entire rule.

Superfund Program

David Coursen, Kathy Setian, and Bill Muno presented an update on the Superfund Program and the status of the financial assurance provision.

The EPA Superfund Program recently came into the public eye at a recent hearing when Rep. Frank Pallone (D-NJ) pressed Administrator Andrew Wheeler on the president’s proposal to cut \$110 million from support for Superfund cleanups. Superfund sites, which had been touted as a priority for the administration, have received flat funding since well before Trump took office. An EPA talking point has been that last year it “cleaned up” the largest number of Superfund sites, 27, in over a decade. But, the number of unfunded sites, 35, is also the highest in several years.

Originally, via the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Superfund site cleanups were funded through a tax on chemical and oil companies. But when this tax was not reauthorized in 1996, the funding of site cleanup became dependent on Responsible Parties (RPs) and on general funding through

annual appropriations. The number of unfunded sites ready for remedy construction has grown recently from 3 in 2015 to 35 now.

In the original 1980 CERCLA legislation there was a provision to establish financial responsibility under Superfund similar to what existed under RCRA. Section 108(b) granted EPA authority to establish financial responsibility for certain industrial classes. EPA, which did not meet its deadline to propose a list of classes subject to this provision, allowed it to remain dormant for 28 years, until a 2008 lawsuit required EPA to start. Following the lawsuit EPA identified four classes: Hard Rock Mining, Chemical Manufacturing, Coal Tar Products, and Electricity Power Generation. But it wasn't until 2014 that a subsequent lawsuit required EPA to have a final rule on Hard Rock Mining and the other three classes by 2022. Evaluating the current state of environmental regulations, EPA made a decision not to require financial responsibility for Hard Rock Mining, Coal Tar Products, and Electricity Generation. The fourth class, Chemical Manufacturing, is currently in the comment period, with a proposal to not require financial responsibility due to the low risk associated with this industrial class. See the 2/21/20 Fed. Reg.

Presenters

Michael Halpern is the Deputy Director of the Center for Science and Democracy at the Union of Concerned Scientists. In his role, he works to promote solutions that ensure government decisions are fully informed by scientific information, and that the public understands the scientific basis for those decisions.

David Coursen is an expert in the Clean Air Act, Environmental Justice, and Constitutional and Administrative Law. He formerly served in the EPA Office of General Counsel. David serves as the lead of EPN's budget and appropriations team.

Kathy Setian is a delegate from the International Federation of Professional and Technical Engineers Local 20 and previously served as a Superfund Project Manager in EPA's Region 9 office from 1991-2012.

Bill Munro is the former Superfund Director in Region 5 where he managed the largest Regional Superfund program in the USA for the last 12 years of his career (1973-2004).