

A New Move by E.P.A. to Attack Obama-Era Regulations

Tom Turino, March 2018

The E.P.A. is considering a major change in the way that it assesses scientific research. Under the proposed policy, the E.P.A. would exclude considering all research for which the raw data of studies can not be made public and hence assessed by other researchers. Scott Pruitt--the E.P.A. administrator who spent \$ 24,570 tax money for a sound-proof booth to maintain the secrecy of his communications--argues that the policy is based on a desire for scientific transparency. Many studies, involving the health records of thousands of individuals, however, are restricted by confidentiality agreements with the subjects. This policy would thus greatly restrict the studies available to the E.P.A. in forming policy to protect human health. Lisa Friedman, of the *New York Times* writes that “Critics, though, say that Mr. Pruitt's goal is not academic rigor, but to undermine much of the science that underpins modern environmental regulations governing clean water and clean air.”¹

This E.P.A. policy change should be analyzed, more specifically, in relation to Pruitt's ongoing attack of the Obama Clean Power Plan which was linked to the Clean Air Act by research that supported *The Endangerment Finding*. In 2009, the E.P.A. released a legal opinion known as an Endangerment Finding concluding that because of its contribution to global warming, carbon dioxide in large amounts met the Clean Air Act's definition of a pollutant that harms human health. Under the Clean Air Act--which is law not policy--all such pollutants must be regulated by the E.P.A. A federal court upheld the finding and the Supreme Court declined to hear a challenge to it. Thus, the E.P.A. remains legally obligated to regulate carbon dioxide, and to roll back regulations that do so would be illegal.²

The 1993 Harvard “Six Cities” study, which is bound by confidentiality agreements, formed the backbone of federal air pollution regulations, and the Endangerment Finding.³ Thus, rather than merely attacking the Clean Power Plan, Pruitt's proposed new policy attacks the basis of the Endangerment Finding itself which has long been a goal of the energy industry. The E.P.A. “scientific transparency” proposal is linked to Representative Lamar Smith's (Rep. Texas), “Open New E.P.A. Science Treatment Act” that has failed to gain support in Congress despite having the backing of the energy, manufacturing and chemical industries.⁴

On the bright side, Democratic state attorneys general have taken a page from the Republican playbook and have filed more than two dozen environmental law suits against the Trump administration for their proposed rollbacks of Obama-era protections.⁵ Equally important, the Democratic congressional leadership struck a number of riders attached to the recent omnibus spending bill that would have rolled back environmental protections. “Many of the most damaging riders in the bill were devised by Republicans and involved environmental policy. Among other things, they would have delayed enforcement of clean-air regulations, killed two Obama-era rules aimed at reducing greenhouse gases from oil and gas wells, weakened protections for endangered species and insulate the Trump administration from legal challenges to its efforts to repeal clean-water rules.”⁶

1 Lisa Friedman, “Narrower Scope for E.P.A. Rules,” *NYT* 3/27/18:A1, A13.

2 (*NYT* 3/10/17:A22; Jody Freeman, *NYT* 3/8/17:A23)

3 Lisa Friedman, “Narrower Scope for E.P.A. Rules,” *NYT* 3/27/18:A1, A13.

4 Lisa Friedman, “Narrower Scope for E.P.A. Rules,” *NYT* 3/27/18:A1, A13.

5 Lisa Friedman and John Schwartz, “Democratic States Sue Over E.P.A. Policy, Just as the Republicans Did,” *NYT* 3/22/18:A16.

6 Editorial, “Congress Resists Trump, for a Change,” *NYT* 3/28/18:A22