

**Environmental Law & Policy Center \* Alliance for the Great Lakes \* Bird Conservation Network \* Citizens Campaign for the Environment \* Citizens' Greener Evanston \* CSJ in Canada \* FLOW (For Love of Water) \* Freshwater Future \* Holy Spirit Missionary Sisters \* Huron River Watershed Council \* Illinois Council of Trout Unlimited \* League of Women Voters of Ohio \* Little Village Environmental Justice Organization \* Midwest Pesticide Action Center \* Milwaukee River Keeper \* Prairie Rivers Network \* Religious Coalition for the Great Lakes \* Superior Rivers Watershed Association \* Tip of the Mitt Watershed Council**

August 16, 2018

Acting Administrator Andrew Wheeler  
United States Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

**RE: Comment on Proposed Rulemaking titled "Strengthening Transparency in Regulatory Science," Docket ID No. EPA-HQ-OA-2018-0259**

Dear Acting Administrator Wheeler,

The Environmental Law & Policy Center, the Alliance for the Great Lakes, Bird Conservation Network, Citizens Campaign for the Environment, Citizens' Greener Evanston, CSJ in Canada, FLOW (For Love of Water), Freshwater Future, Holy Spirit Missionary Sisters, Huron River Watershed Council, Illinois Council of Trout Unlimited, League of Women Voters of Ohio, Midwest Pesticide Action Center, Milwaukee River Keeper, Religious Coalition for the Great Lakes, Superior Rivers Watershed Association, and Tip of the Mitt Watershed Council ("Midwestern Organizations") respectfully submit these comments on the U.S. Environmental Protection Agency's (EPA) proposal titled "Strengthening Transparency in Regulatory Science." The Midwestern Organizations are public interest membership groups working to improve public health and environmental quality and to protect our natural resources across the Great Lakes states and the Midwest region.

The Midwest, with its industrial and agricultural heritage, experiences the full range of environmental and public health challenges to air, land, and water. The Midwest is home to the Great Lakes, an international treasure, with incalculable ecological, cultural, and economic value. They comprise the largest freshwater ecosystem on Earth, containing 20% of the world's freshwater supply, and they provide drinking water to over 40 million people.

We depend upon EPA to effectively implement foundational environmental laws including the Clean Air Act, Clean Water Act, Safe Drinking Water Act, Toxic Substances Control Act and other fundamental laws enacted by Congress to protect the public. The Midwestern Organizations strongly oppose EPA's proposal to pick and choose the science it will consider in developing a broad range of essential public health and environmental protection regulations. To

fulfill its statutory mandates and responsibility to protect the public health, EPA should rely upon the best available science.

In this letter, we raise the following issues:

- 1) EPA's proposal is not about transparency and there is no problem to fix;
- 2) The proposal would allow arbitrary decisions to be made by political appointees about what science can and can't be used;
- 3) There is no basis in existing bedrock environmental laws that authorizes EPA to limit science considered in rulemaking processes; and
- 4) The negative effects of this proposed rule on individual EPA programs would be farreaching and would undermine EPA's ability to protect air and water quality and public health across the Midwest.

In sum, this proposal to censor, narrow or otherwise compromise science will affect the health of millions of Midwesterners, our quality of life, and the environmental health of the Great Lakes.

**EPA's proposal is not about transparency.** EPA's proposal would limit the science the agency can use to inform decision-making to address an alleged lack of transparency, but there is no crisis or flaw that needs to be addressed. The peer review system is working very well. The situations in which personal data need to be protected are clear and do not compromise the validity of the scientific studies. Rather than addressing a legitimate problem, this proposal is a next step in a very transparent effort to discredit and make unavailable certain seminal studies that establish the connection between exposure to air pollution and adverse public health impacts.

Significantly, EPA's own Science Advisory Board voted to review this proposed rule on June 1, 2018. This action is in addition to the vehement reaction that this proposal has prompted from the most reputable scientists, scientific organizations, and scientific publications in the country directly challenging the need for this proposal—there is no “secret science.”

**The proposal would allow arbitrary decisions to be made by political appointees about what science can and can't be used.** Environmental laws direct EPA to use the “best available science” in countless situations. Having the Administrator in a position of making a case-by-case decision on science to suit a particular position is truly arbitrary and capricious. It will lead to outcomes that do not fulfill the agency's statutory mandate and will therefore be vulnerable to legal challenge. EPA should continue to apply the rigorous standards the agency has used over many decades of issuing life-saving standards and let stakeholders engage in the process that is full and open with regards to science.

By putting unnecessary restrictions on the kinds of studies it can consider in developing significant rules under critical environmental and public health laws from air pollution standards to water quality issues to chemical regulation in consumer products, EPA is undermining its ability and duty to meet statutory obligations.

**There is no basis in existing bedrock environmental laws that authorizes EPA to limit science considered in rulemaking processes.** EPA cites several key laws as a justification for this current proposal to limit or constrain the science it can consider. Nowhere in the cited statutes is there any basis for demanding access to raw data, nor does this relate sensibly to any definition of best available science. Rather it undermines the use of best available science as called for in numerous environmental statutes including the Clean Air Act. Further, there is no basis in the statutes for politically appointed administrators to choose which science will be considered and which may not be.

The Clean Air Act, for example, has requirements to update pollution standards that provide for an adequate margin of safety for public health. This determination can only be reliably made using the best available science. However, this proposal would prevent EPA from using the best available information to set science-based pollution standards that would provide for an adequate margin of safety. EPA should not cite the Clean Air Act as an appropriate source of statutory authority.

In sum, there is no statutory authority for EPA to rely on to censor or constrain science. Indeed, quite the opposite. Further, such an effort would only serve to undermine EPA's essential role.

**The negative effects of this proposed rule on individual EPA programs would be farreaching and would undermine EPA's ability to protect air and water quality across the Midwest.** Midwesterners are exposed to unhealthy levels of air pollutants, including particulates, ozone, and toxic emissions from our industries and agricultural operations. Achieving and maintaining healthy air to breathe remains a challenge across the Midwest. EPA just finalized nonattainment designations for the Midwest's biggest cities, where millions of people live, work and play. Foundational studies about the impact of air pollution on public health are in the bullseye of this proposal—indeed, they have been the target of legislative efforts to restrict agency science for years. These studies have been reviewed numerous times and found to be sound and appropriate. Under EPA's proposed rule, however, they would be out of bounds, compromising the agency's ability to truly assess the impacts of air pollution and to set national air health standards at a level that will protect the public health, as required by the Clean Air Act. Less protective standards will mean even more air pollution in our communities.

The elimination of these studies would also skew the evaluation of costs and benefits, inappropriately minimizing the public health benefits. Artificially suppressing the benefits will lead to less protective rules that will not be based on a true accounting of the cost to the public in terms of public health impacts.

Given the breadth of agriculture across the Midwest, communities in our region will also be harmed if EPA cannot fully consider the best available science in its ongoing review of the insecticide chlorpyrifos. This insecticide harms public health through its application and as a residual on food and in water supplies. The proposed policy could well restrict EPA's scientists' ability to consider a critical epidemiological study conducted by Columbia University that showed that *in utero* exposure to the chemical was linked to negative neurodevelopmental impacts. The health data were collected along with confidentiality pledges to the mothers. Eliminating this study would mean that the EPA would have little information on the direct

impacts of chlorpyrifos exposure to human health, and could result in a policy decision that is less protective of public than it otherwise would have been.

The Midwest region is also significantly impacted by exposure to toxic lead, whether through water, soil or lead-based paint. In its upcoming review of standards for lead in dust, paint, and drinking water, this proposed rule would allow the EPA Administrator to restrict agency scientists from considering a significant body of scientific work that links lead exposure to adverse health effects. Much of the scientific work in this field is derived from past studies involving people exposed to harmful lead levels. Additionally, many estimates of lead risk are based on models of potential exposure pathways for children. A significant amount of this modeling and human studies work could be restricted from use under this rule. Given urgent public health challenges from lead in drinking water in Flint to lead in soil in East Chicago, EPA should be seeking out the best science and studies not ways to limit what it can consider in protecting public health.

Both safe recreational enjoyment of the Great Lakes and water quality are threatened by EPA's proposal. Availability of scientific data has been key to addressing important public health issues in the Great Lakes, such as the development of the 2012 Recreational Water Quality Criteria (RWQC), "designed to protect the public from exposure to harmful levels of pathogens in water-contact activities."<sup>1</sup> The RWQC sets recommended concentration thresholds of known pathogens that cause gastrointestinal illness from exposure in water, such as E. Coli and enterococci. These recommendations are informed by "the latest research and science, including studies that show a link between illness and fecal contamination in recreational waterways."<sup>2</sup> These recommendations provide essential information for determining warnings and beach closures for recreational users in the Great Lakes region.

Finally, with the rise of toxic harmful algal blooms (HABs) in the region, safe drinking water has become a primary concern. The EPA's 2015 Drinking Water Health Advisories for Two Cyanobacterial Toxins provide necessary guidance based on scientific studies that indicate the health effects of exposure to cyanotoxins, such as gastroenteritis and liver and kidney damage.<sup>3</sup> Cyanotoxins, similar to pathogens like E. Coli and enterococci, pose serious health risks from exposure in recreational settings as well. This relatively new area of concern is still being studied and access and use of the latest research as it continues to evolve is critical to protecting the safety of drinking water and recreation in the Great Lakes region.

## **Conclusion**

The Midwest and Great Lakes depend on EPA fully implementing and enforcing bedrock environmental and public health laws using the best available science. EPA's proposal, rather than promoting transparency, is about placing unwarranted and inappropriate constraints on the studies and science the agency will consider. To date, EPA has shown time and again that achieving cleaner air and water and a healthier environment go hand in hand with economic

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<sup>1</sup> <https://www.epa.gov/sites/production/files/2015-10/documents/rec-factsheet-2012.pdf>

<sup>2</sup> *Ibid.*

<sup>3</sup> [https://www.epa.gov/sites/production/files/2017-06/documents/cyanotoxins-fact\\_sheet-2015.pdf](https://www.epa.gov/sites/production/files/2017-06/documents/cyanotoxins-fact_sheet-2015.pdf)

growth and that improving public health through pollution reduction has substantial benefits to society as a whole and to our country's most vulnerable residents in particular. EPA has a proven record of using the best available science and research to set standards under its foundational laws that protect public health and the environment, which the scientific peer review process and our transparent and participatory rulemaking process can well ensure. Our children's health across the Midwest depends on EPA continuing to do its job and not let an industry-driven agenda undermine its essential role.

Sincerely,

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