

“Making the Environmental Protection Agency Great Again”
Testimony Before the House Science, Space and Technology Committee
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2318 Rayburn House Office Building

I. Introduction

Thank you Chairman, Ranking Member, and distinguished members of the Committee for inviting me to participate in today’s hearing.

My name is Jeff Holmstead. I am a partner in the law firm Bracewell LLP and have been the head of the firm’s Environmental Strategies Group (ESG) since 2006. For almost 25 years, my professional career has been focused on policy, regulatory, and legal issues arising under the Clean Air Act. From 1989 to 1993, I served in the White House Counsel’s Office as Associate Counsel to President George H.W. Bush. In that capacity I was involved in many of the discussions and debates that led to the passage of the 1990 Amendments to the Clean Air Act – and was then deeply involved in the initial efforts to implement the 1990 Amendments. From 2001 to 2005, I was the Assistant Administrator of EPA for Air and Radiation and headed the EPA Office in charge of implementing the Clean Air Act.

When not in the federal government, I have been an attorney in private practice, representing a wide variety of clients on Clean Air Act and other environmental issues. Since I joined Bracewell LLP in 2006, I have worked primarily with companies and trade groups in the energy industry.

This hearing could not be more timely as the change in administration creates an opportune moment for refining the mission of EPA as it seeks to strike the right balance between the costs and benefits of environmental regulations. I have spent the last 25 years of my professional life working on EPA issues, and I can say with confidence that, if we focus on sound science and good regulatory design, we could have the environmental protection we all want at a much lower cost than we have today.

That is why I want to thank the Committee for hosting today’s hearing, which I think will shed light on changes that can strengthen the work being done at EPA. To this end, I commend this Committee and its staff for considering the “Secret Science Reform Act” and the “EPA Science Advisory Board Reform Act.” I hope that this hearing will push both bills a few steps closer to enactment.

II. The Secret Science Reform Act

No matter one’s political views, it is hard to disagree that transparency is an important principle when it comes to the development of public policy and regulations. Transparency not only stays true to our collective democratic ideals but also helps to ensure that well-informed debate occurs before new policies are made or new regulations are promulgated. This is where the Secret Science Reform Act can make important and meaningful reforms.

How can EPA be sure that it is relying upon the best available science when the scientific and technical information used to support its actions cannot be identified and made available to the public? Only when such information is made public can other interested and qualified parties conduct independent analysis and seek to reproduce research results. Transparency not only breeds accountability but also a healthy respect for dialogue and honest debate.

I don't think anyone can object to the basic premise that scientific information used to support regulatory actions should be made public. Former President Obama's memorandum on scientific integrity stated that "there should be transparency in the preparation, identification, and use of scientific and technological information in policymaking."¹ Furthermore, a White House Office of Science and Technology Policy memo, also from the Obama Administration, explains that agencies should expand and promote access to scientific information by making it available online in open formats.² The Secret Science Reform Act would overcome bureaucratic hurdles that stand in the way of these principles.

As far as I know, the only legitimate concern that has been raised about this legislation is that, in some cases, data that has been used to support rulemaking might include medical or other personal information about specific individuals and should not be released because of privacy concerns. Certainly, no one believes that it is appropriate for anyone – much less a federal agency – to publicly release such information. But I cannot imagine a case in which personal information about any particular individual or individuals would be needed to support the types of regulatory actions and policies decisions made by EPA. I do understand that documentation used in some studies does contain personal information about some individuals. But names or other identifying information could certainly be redacted before any such information is made public.

Admittedly, EPA would incur costs to review certain data and ensure that personal information is redacted before it is made public. But when regulations impose billions of dollars on consumers and businesses, it is surely appropriate for the government to spend a tiny fraction of this amount to ensure that the scientific information used to support those regulations can be made public.

It is worth noting that EPA itself has recognized that "scientific research and analysis comprise the foundation of all major EPA policy decisions" and that "the Agency should maintain vigilance toward ensuring that scientific research and results are presented openly and with integrity, accuracy, timeliness, and the full public scrutiny demanded when developing sound, high-quality environmental science."³ These are laudable goals, and the Secret Science Reform Act will ensure that EPA actually lives up to them when it relies on such information to support regulatory decisions.

¹ See: <https://www.gpo.gov/fdsys/pkg/FR-2009-03-11/pdf/E9-5443.pdf>

² See: <http://www.sciencemag.org/news/2010/12/white-house-releases-long-awaited-guidance-scientific-integrity>

³ See: <http://ethics.iit.edu/ecodes/node/5537>

III. Science Advisory Board Reform Act of 2015

The Science Advisory Board (SAB) Reform Act would also make sensible reforms and increase the likelihood that EPA's regulatory decisions will not only be based on the best data but will be informed by the best possible analysis and interpretation of that data. EPA's Science Advisory Board (SAB) and subsidiary groups like the Clean Air Science Advisory Committee (CASAC) often advise EPA on scientific issues that are important for the Agency's regulatory actions. Such groups are generally known as independent advisory committees, but the EPA Administrator appoints the members of these groups based on recommendations from EPA staff. Not surprisingly, EPA tends to choose people who share EPA's views about the importance of environmental issues. The members of the SAB and other subsidiary groups are well-qualified and have good credentials, but there are other scientists and researchers who are equally well qualified but do not get appointed because they are more skeptical about EPA's views on certain important issues.

The SAB Reform Act would help to ensure that EPA decisions are informed by experts from a variety of fields and backgrounds that are relevant to the issues under consideration. Throughout my professional career, I have seen how serious dialogue among thoughtful people with different perspectives can be used to inform both policy and science. By focusing on disclosure rather than disqualification, the SAB Reform Act would allow for a wider range of viewpoints while ensuring that any possible conflicts -- financial or otherwise -- are publicly disclosed.

By requiring EPA to make public a list of nominees to the Board and accept public comments on the nominees, the Act comports with the maxims of transparency outlined above. And by instituting a requirement to balance scientific and technical points of view, the Act helps to ensure that the SAB provides the best advice and insights to EPA as it crafts regulations.

IV. EPA's Integrated Risk Information System (IRIS)

Another EPA program that I believe should receive scrutiny from the Committee is EPA's Integrated Risk Information System ("IRIS"). The IRIS program, which is located within EPA's National Center for Environmental Assessment ("NCEA"), endeavors to "develop impartial toxicity information independent of its use by EPA's program and regional offices to set national standards and clean up hazardous sites."⁴ While the IRIS program as a whole is laudable, outside experts believe that it often overstates the actual risk posed by specific chemicals.

EPA is inclined to be "conservative" in making both regulatory decisions and scientific conclusions. For example, if there are 5 studies finding that a substance poses very little risk and one that finds a higher risk, EPA will typically place more weight on the one rather than the five. Some argue that this is appropriate, and the EPA should always err on the side of being overly protective, but this is a decision for policymakers, not for scientists. And when regulatory decisions are made based on overly conservative science, it can have serious effects on the regulated community, sometimes even threatening the viability of industrial facilities that provide important benefits to local workers and communities.

⁴ See: <https://www.epa.gov/iris/basic-information-about-integrated-risk-information-system>

The IRIS Program sometimes relies on very small and statistically limited subgroups to reach conclusions regarding risk of specific chemicals. In some cases, it has even relied on outdated – and poor quality – Russian and Chinese data instead of domestic data relied upon by experts throughout various domestic industries, simply because the foreign studies found risks that the widely used U.S. studies did not. And then, in establishing reference values (or “safe” levels of exposure), the IRIS program relies on additional conservative assumptions.

As a result of these things, NCEA sometimes misleads the public and stokes unnecessary fears, causing serious real-world consequences for facilities that already are struggling to keep their doors open—and their jobs in the United States. The President and many other officials from both political parties have stressed the importance of keeping manufacturing capacity in the United States, but the IRIS program can, in some cases, imperil this important goal. Accordingly, as the Committee contemplates how best to craft transparent, fair, and predictable regulatory processes based upon sound scientific information, the IRIS program, in my view, should be an important part of that broader conversation.

V. Conclusion

Again, I very much appreciate the opportunity to appear before the Committee and hope my testimony will be helpful to you as you seek to shape the strategic direction at EPA. I commend the Committee for its work so far and I respectfully offer my input, as necessary, to you going forward. Thank you and I look forward to answering any questions that the Committee may have.

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