



PRESS RELEASE

Attorney General Frosh Joins Coalition of States, Counties in Opposing EPA Plan to Censor Science Data

Proposed Pruitt-Era Rule Limiting Scientific Evidence that Can Be Used to Protect Health and Environment is “Arbitrary And Capricious, Violates Federal Law, and Contains Clear Errors”

BALTIMORE, MD (August 17, 2018) – Maryland Attorney General Brian E. Frosh, part of a 23-member coalition of states, counties, and cities, today called on Acting Environmental Protection Agency (EPA) Administrator Andrew Wheeler to withdraw his predecessor’s “harmful and deeply flawed” proposal to censor science at the Agency. The call was part of detailed legal and technical [comments](#) submitted by the coalition on former EPA Administrator Scott Pruitt’s proposed “Strengthening Transparency in Regulatory Science” rule. That proposed rule would exclude from EPA decision-making any scientific studies, models, and other important information that have been validated by peer review simply because not all underlying data are available to the public. The coalition charges that, in addition to making “little sense as a matter of science,” the proposal is “arbitrary and capricious, violates controlling federal law, and contains clear errors in reasoning.” The coalition affirms that they “stand ready to pursue legal remedies should EPA persist in this misguided effort.”

“Smothering EPA’s ability to use the best available science would violate the very federal laws that EPA is required to uphold,” said Attorney General Frosh. “The nation’s core environmental and public health laws, including the Safe Drinking Water Act and the Clean Water and Air Acts, would be weakened, affecting the health of our citizens and our natural resources.”

In the comments, the coalition argues that the EPA is legally prohibited from adopting the proposed rule because it directly conflicts with statutory requirements regarding the EPA’s consideration of scientific information. No federal environmental statute directly allows – or even suggests – that the EPA can ignore the “latest” or “best” or “appropriately designed and conducted” scientific studies whenever the underlying data are not public. As prominent scientific organizations have noted, peer review of scientific evidence is routinely performed despite the underlying data not being publicly available, as there are often very good reasons – such as the protection of personal privacy and confidentiality, and proprietary interests and property rights – why some research data simply cannot be made fully available.

The coalition also contends that proposal fails to meet the most fundamental of legal requirements for a valid rulemaking under the federal Administrative Procedure Act (APA), as it is too vague, conclusory, and conditional to allow for meaningful public participation. For example, the actual parameters of the rule are unclear, the alternatives under consideration are

open-ended, and critical information, such as its actual cost, is entirely missing. Further, the coalition charges that the EPA's failure to consult with scientific experts – including its own internal science advisory board – conflicts with the APA's fundamental requirement that an agency developing a proposed rule consult with persons having expertise regarding the subject matter of the proposal.

The comments also push back against the EPA's assertions that the proposed rule would not affect states. EPA standards and regulations are of fundamental importance to states, and actions that limit the science used to set standards and regulations directly impact them. For example, EPA standards – such as National Ambient Air Quality Standards – not only form the backbone of state efforts to ensure the quality of our air, water, and land, and protect the health, safety, and welfare of our residents, but also serve as a backstop to prevent pollution from out-of-state sources from undercutting our efforts. Even those states that are not statutorily required to apply federal standards may not always have the institutional capacity to develop their own standards and thus, must rely on the standards set by the EPA.

Coupled with the EPA's proposed overhaul of how the Agency values environmental and public health protections and former Administrator Pruitt's directive forbidding many of the most qualified experts to sit on EPA science advisory panels, EPA's science censorship proposal is part of the Trump Administration's continued effort to undermine the foundations of EPA's public health and the environment protections.

The comments were led by Attorney General Underwood and New Jersey Attorney General Gurbir Grewal and signed by the Attorneys General of New York, New Jersey, California, Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, North Carolina, Oregon, Pennsylvania, Washington, and the District of Columbia; the Secretary of the Pennsylvania Department of Environmental Protection; and the Attorneys of King County (WA) and the cities of Chicago, Los Angeles, New York, Oakland, Philadelphia, and San Francisco.