

**Advocates for a Clean Lake Erie * Alliance for the Great Lakes * Black
Autonomy Network Community Organization * Environmental Law & Policy
Center * For Love of Water (FLOW) * Friends of the Cloquet Valley State
Forest * Genesee Valley Audubon Society * Green-Rock Audubon Society *
Headwaters Chapter Izaak Walton League * Hoosier Environmental Council
* Illinois Council of Trout Unlimited * Indiana Wildlife Federation * Izaak
Walton League - MN Division * Izaak Walton League of America New York
State Division * League of Women Voters of Illinois * League of Women
Voters of Indiana * League of Women Voters-Lake Michigan Region *
Midwest Environmental Advocates * Milwaukee Riverkeeper * Minnesota
Center for Environmental Advocacy * Northeastern Minnesotans for
Wilderness * Plastic Oceans International * Religious Coalition for the Great
Lakes * Save The River Upper St. Lawrence Riverkeeper * Sisters of St.
Joseph Global Environment Committee * Toxics Free Great Lakes Binational
Network * Wisconsin Wildlife Federation**

May 18, 2020

**Great Lakes and Midwest Groups comments on EPA Supplemental Strengthening
Transparency in Regulatory Science Proposal: Docket ID No. EPA-HQ- OA-2018-
0259**

The Environmental Law & Policy Center, Advocates for a Clean Lake Erie, Alliance for the Great Lakes, Black Autonomy Network Community Organization, For Love of Water (FLOW), Friends of the Cloquet Valley State Forest, Genesee Valley Audubon Society, Green-Rock Audubon Society, Headwaters Chapter Izaak Walton League, Hoosier Environmental Council, Illinois Council of Trout Unlimited, Indiana Wildlife Federation, Izaak Walton League - MN Division, Izaak Walton League of America, New York State Division, League of Women Voters of Illinois, League of Women Voters of Indiana, League of Women Voters-Lake Michigan Region, Midwest Environmental Advocates, Milwaukee Riverkeeper, Minnesota Center for Environmental Advocacy, Northeastern Minnesotans for Wilderness, Plastic Oceans International, Religious Coalition for the Great Lakes, Save The River Upper St. Lawrence Riverkeeper, Sisters of St. Joseph Global Environment Committee, Toxics Free Great Lakes Binational Network, and Wisconsin Wildlife Federation respectfully submit these comments on the U.S. Environmental Protection Agency's (EPA) proposal titled "**Supplemental Strengthening Transparency in Regulatory Science.**" The Great Lakes and Midwestern groups 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 more than 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 others, enacted by Congress to protect the public and our environment. The Midwestern Organizations strongly oppose EPA's Supplemental Proposal. EPA itself has consistently recognized its own record of protecting public health through standards to achieve cleaner air and water while the economy has grown. There is no need for EPA to undertake this effort. It will only create confusion over the science EPA will consider, how it will consider that science, and ultimately empower the EPA administrator to pick and choose the science EPA will consider in developing a broad range of essential public health and environmental protection regulations.

In this letter, the Great Lakes and Midwest groups raise the following issues:

- 1) The supplemental proposal provides no basis for EPA to engage in an effort to censor or otherwise constrain the science it has relied upon to protect public health under the Clean Air Act, Clean Water Act or other environmental laws.
- 2) The supplemental proposal continues to inject politics over science and the core mission of EPA by empowering the EPA administrator to pick and choose the science that will be used to set essential public health safeguards.
- 3) The Good Housekeeping Statute alone, or in conjunction with existing bedrock environmental laws, does not authorize EPA to limit science considered in rulemaking processes.
- 4) The supplemental proposal fails to address the far reaching effects of this proposed rule on individual EPA programs and would undermine EPA's ability to protect air and water quality and public health across the Midwest.

EPA's scheme 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, which provide drinking water to over 40 million people. This supplemental proposal creates confusion and fails to resolve the fundamental flaws in the original 2018 proposal; it should be withdrawn.

EPA has successfully utilized the "best available science" to improve public health and has failed to justify the need for this action. The supplemental proposal provides no additional justification for a purported effort to address "transparency." EPA's initial proposal and the supplemental proposal would limit the science the agency will use to inform decision-making to address an alleged lack of transparency, but there is no crisis in consideration of science that needs to be addressed.

EPA's own [assessment](#) of air quality trends documents air quality progress while noting economic growth. These dual accomplishments were achieved using the very science the so-called transparency rule could disqualify. EPA's own information makes clear it can continue to use the best available science to protect public health. The changes provided in the supplemental rule fail to clarify how EPA will approach long standing scientific studies – it only creates further confusion and broadens the scope of science that will be covered. The peer review system continues to work very well. The situations in which personal data need to be protected are clear and do not compromise the validity of the scientific studies. Indeed, the initial proposal and this supplemental proposal are 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.

The supplemental proposal continues to allow arbitrary decisions to be made about what science can and can't be used. Environmental laws direct EPA to use the “best available science” in countless situations. The supplemental proposal creates multiple confusing pathways for considering long standing public health studies, including the option of “tiered access” or giving preference to some studies over others. Ultimately, the supplemental proposal continues to put the administrator in a position of making a “case-by-case” decision on science to suit a particular position. EPA's purported goal of “transparency” means studies will be evaluated not on their quality but on non-scientific ill-defined metrics.

The proposed structure is arbitrary and capricious and 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 setting forth unnecessary and confusing 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.

The Federal Housekeeping Statute alone or in conjunction with existing bedrock environmental laws does not authorize EPA to limit science considered in rulemaking processes. EPA's supplemental proposal is a second failed attempt at justifying an effort to limit or otherwise constrain its own ability to use the best available public health studies and science from outside EPA. The effort in the initial proposal to ground so-called “transparency” in bedrock environmental laws was exposed as untenable. EPA's addition of the Federal Housekeeping Statute to the mix and recitation of new sections of several environmental laws does not strengthen EPA's case. Whether or not EPA has 301 housekeeping authority is irrelevant. The statute authorizes EPA to control its own internal documents or materials; the statute and its authorities are not applicable to the long standing public health studies EPA has relied upon to protect public health through the notice and comment rulemaking process.

EPA's justification that this action to constrain science or leave science up to the political whims of the administrator is about internal agency procedure doesn't hold. This proposal is not about

internal paper work, but about whether or not EPA can fulfill its core mission consistent with bedrock environmental laws.

In addition to the Housekeeping Statute, the supplemental proposal points to specific provisions of several key laws (RCRA, CERCLA and the Clean Water Act) as a justification for limiting or constraining the science it can consider. Nowhere in the cited statutes or sections is there any basis for demanding access to raw data or otherwise disqualifying long standing studies, 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.

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 that 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. The added confusion of the supplemental proposal, including so-called tiered access or EPA's ability to consider some research over what has long been considered "best available science" based upon the availability of data, does not legitimize the proposal.

In sum, there is no statutory authority, with or without the Housekeeping Statute, for EPA to rely on to censor or constrain science. Further, finalizing this effort will only serve to undermine EPA's essential role and create confusion over which studies will be considered and how they will be valued to set standards that directly impact public health and the quality of our air and water. Many of these uncertainties are recognized in EPA's own Science Advisory Board's April 28, 2020 letter.

The negative "effects of the supplemental 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 fine particulates, ozone, and toxic emissions from our industries and agricultural operations. Achieving and maintaining healthy air to breathe remains a challenge across the Midwest. 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 could 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.

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 depending on the availability of “tiered access”, qualified consideration or the administrator’s decision making process. 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.”¹ The RWQC sets recommended concentration thresholds of known pathogens that cause gastrointestinal illness from exposure in water, such as E. Coli and enterocci. These recommendations are informed by “the latest research and science, including studies that show a link between illness and fecal contamination in recreational waterways.”² 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.³ Cyanotoxins, similar to pathogens like E. Coli and enterocci, 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 Great Lakes and Midwest groups depend on EPA fully enforcing bedrock environmental and public health laws using the best available science. EPA’s supplemental proposal, rather than promoting transparency, is about placing unwarranted and arbitrary constraints on the studies and science the agency will consider. The addition of the Federal Housekeeping Statute with or without support in environmental laws does nothing to bolster the case for this effort. To date, EPA has shown time and again that achieving cleaner air and water and a healthier environment go hand in hand with economic 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

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

² Ibid.

³ https://www.epa.gov/sites/production/files/2017-06/documents/cyanotoxins-fact_sheet-2015.pdf

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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