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Blog: The Fine Print

Yet Another House Bill Would Limit EPA's Ability to Protect the Public and Environment

by Katie Weatherford, 6/23/2014

On June 24, the House Science Committee will meet to review the Secret Science Reform Act of 2014 (H.R. 4012), a bill that seeks to stifle the U.S. Environmental Protection Agency's (EPA) ability to protect the public and environment from harm, even when there is overwhelming scientific evidence to support agency action.

The bill would prohibit EPA from issuing safeguards or even sharing information with the public about potential harms unless the agency makes publically available all scientific data and technical information used to support its action. The information that EPA would be required to publicize must be "specifically identified" and presented "in a manner that is sufficient for independent analysis and substantial reproduction of research results." However, these ambiguous terms are not defined anywhere in the bill, ultimately leaving their meaning to be decided during litigation.

Despite claims by some members of Congress and their industry allies that this bill would improve transparency and verifiability of scientific studies relied upon by EPA to justify new or updated safeguards, the plain language of the bill proves that the real objective is to delay EPA from its important work of protecting the public and environment from harm.

A key concern with the legislation is that it would severely restrict EPA's ability to act, even when the agency is unable or even legally prohibited from sharing the scientific data or technical information it relied on to justify taking action. While the bill would not require EPA to release this information to the public, the bill would still prohibit the agency from taking action based on that information, no matter how credible or conclusive the studies may be. In other words, EPA could no longer rely on peer-reviewed scientific studies if underlying data is protected by privacy laws, as is the case for human health studies.

The Union of Concerned Scientists (UCS) sent a letter to members of Congress in February warning that this bill would likely prevent EPA "from using any study that uses personal health data. . . . Since many EPA rules are health-based standards, this rule would severely restrict the ability of the agency to base rules on science." The group also warned that "new scientific methods and data may be restricted by intellectual property protections or industry trade secret exemptions."

The bill would also likely prevent EPA from considering many industry studies, which often contain confidential business information (CBI), to justify agency actions that benefit public health and the environment. Yet, in certain instances that benefit industry such as permitting, the bill allows EPA to take action without disclosing industry data containing CBI.

According to another letter sent by the Natural Resources Defense Council (NRDC), "The bill would make it harder for

EPA to consider confidential information from industry in many instances, limiting the agency's ability both to protect the public and to reduce the costs of regulation." "At the same time," the letter states, "the bill unfairly caters to industry by exempting permitting and other agency actions from its ambit and underscoring the CBI protections in existing law."

NRDC also identified several examples illustrating how this bill would "limit EPA's ability to review relevant information that current law allows EPA to consider." According to NRDC:

- EPA could not establish a drinking water standard or health advisory for a contaminant under the Safe Drinking Water Act based on information that industry claims was protected by confidential business information (CBI).
- EPA could not issue a risk/hazard assessment or a cancellation of a pesticide based upon (1) studies containing CBI; (2) epidemiological or clinical studies where the medical records of the patient are confidential under . . . patient confidentiality requirements; or (3) where the study would not be "reproducible" because of restrictions on access to confidential patient information.
- EPA could not regulate or issue guidance to prevent lead poisoning of children in housing . . . based upon clinical or epidemiological studies, where the medical records of the patients are confidential under . . . patient confidentiality requirements, or where the study would not be "reproducible" because of restrictions on access to confidential patient information.
- EPA could not conduct risk/hazard assessments necessary to inform and govern the cleanup of Superfund sites, to the extent that potentially responsible parties asserted CBI protections over company information potentially implicating their contribution to a site, or CBI relating to specific chemicals.

Instead of working to reduce EPA's ability to rely on critical scientific and technical information to keep the public and environment safe, Congress should be working to ensure EPA has the authority and resources it needs to enhance our health and environmental safeguards. When this bill comes before the House Science Committee for review on Tuesday, the committee should ensure that this bill is put to rest and more worthy proposals receive due consideration.

back to Blog

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