



March 27, 2017

Dear Representative:

The Environmental Data & Governance Initiative (EDGI) has analyzed the potential effects of the Honest and Open New EPA Science Treatment Act of 2017 (H.R. 1430) and determined that the bill would obstruct the EPA's use of scientific studies in essential agency work. EDGI is an organization comprised of non-profit employees and academics that promotes open and accessible government data and information along with evidence-based policy making. As researchers invested in robust environmental data governance, EDGI members are concerned that this legislation would force the EPA to make determinations without certain categories of crucial evidence-based research it needs to make the best decisions for the health and welfare of the public and the environment.

H.R. 1430 is just the latest iteration of the proposed Secret Science Reform Acts of 2014 and 2015. These bills would have prevented the EPA from relying on a large number of validated and pivotal scientific studies in its decision-making processes. Similarly, in its words, H.R. 1430 would "prohibit the Environmental Protection Agency from proposing, finalizing, or disseminating regulations or assessments based upon science that is not transparent or reproducible." Proponents claim that H.R. 1430 would improve transparency in scientific decision-making and public data accessibility, efforts that EDGI supports. However, as EDGI's analysis shows, H.R. 1430 instead places important validated science off limits to the EPA.

The data access requirements in H.R. 1430 would obstruct public protections critical to human safety and health. Any studies that utilize confidential medical records – including many human health studies – would be nearly impossible for the EPA to use because personally identifiable medical data cannot be released to the general public. For instance, the EPA would not be able to use epidemiological studies that are critical for linking exposure to toxics with certain types of diseases in the creation of standards that ensure our safe drinking water and healthy air.

Additionally, the proposed legislation would bar studies that cannot be reproduced from use by the EPA. Blocking the EPA from using studies that are hard to reproduce impedes the EPA's ability to protect the public from future health hazards. Some of the nation's best evidence of public health risks comes from long-term analyses, assessments of chronic effects of exposure to toxic substances, studies based on natural and human-caused catastrophes, and other studies that we cannot reproduce.

Specific examples of current protections and programs that would have been difficult, if not impossible, for the EPA to issue had H.R. 1430 been in place include:¹

¹ See EDGI's publication, [Public Protections under Threat at the EPA](#), about H.R. 1430 for more information about these and other regulations that relied on data that would be prohibited for use under the proposed law.

- **Standards that protect children from lead-based paint hazards in their homes and schools.**² The EPA creates standards that protect children from the adverse neurological effects of exposure to lead in paint, dust, and soil. The agency bases these lead protections on long-term studies of children who have suffered lead exposure in the past.³ Because EPA regulations have effectively reduced lead exposure in children, reproducing these long-term epidemiological studies would be nearly impossible, as the cohort of study subjects no longer exists. Prohibiting the EPA from using historical reports like these would make continuing regulation of lead much harder.
- **Safeguards that protect people from exposure to radioactive contaminants in drinking water.**⁴ The EPA's standards for the permissible quantity of certain radionuclides, such as uranium, found in drinking water are based on data from radiation exposure studies that use confidential patient information from a cohort of Hiroshima and Nagasaki atomic bomb survivors, which could not be used under this bill.⁵ Long-term epidemiological studies conducted on this cohort are also unreproducible, rendering these studies, and others like them, nearly impossible for the EPA to use under H.R. 1430's provisions.
- **Measures that improve safety at industrial facilities and protect and assist first responders and emergency authorities during accidents.**⁶ The EPA improved its risk management regulations following several catastrophic events involving chemical plants, including an explosion at the West Fertilizer Company facility in Texas that killed 14 people, ten of them first responders.⁷ The studies that result from chemical explosions like these cannot be reproduced and would not be available for the EPA's use under H.R. 1430, preventing the agency from properly protecting first responders and the public from future chemical disasters.
- **Plans that ensure best practices in cleaning up major oil spills and other hazardous waste spills that affect wildlife health and habitats.**⁸ After the Exxon Valdez oil tanker ran aground in Alaska's Prince William Sound on March 24, 1989, the EPA developed a restoration program to clean up the 11 million gallons of oil that had spilled into the Sound and affected over 1,000 miles of

² EPA Rule [40 C.F.R. 745](#), *Lead; Identification of Dangerous Levels of Lead*.

³ See for example, Neil Wigg *et al.*, *Port Pirie Cohort study: childhood blood lead and neuropsychological development at age two years*. *Journal of Epidemiology and Community Health*, 42(3), 213–219 (1988).

⁴ EPA Rule [40 C.F.R. Parts 9, 141, and 142](#), *National Primary Drinking Water Regulations; Radionuclides*.

⁵ Marissa Fesenden, *The Health Effects of the Atomic Bomb Are Still Being Studied*, August 6, 2015, Smithsonian.com, retrievable at <http://www.smithsonianmag.com/smart-news/how-bombings-hiroshima-and-nagasaki-still-inform-health-today-180956185/>.

⁶ EPA Rule [40 C.F.R. Part 68](#), *Accidental Release Prevention Requirements: Risk Management Programs under the Clean Air Act*.

⁷ Manny Fernandez, *Lax Oversight Cited as Deadly Factor in Deadly Blast at Texas Plant*, New York Times, April 22, 2014, retrievable at <https://www.nytimes.com/2014/04/23/us/lack-of-oversight-and-regulations-blamed-in-texas-chemical-explosion.html>. The final death toll was fifteen lives lost in the explosion.

⁸ EPA Program [55 Fed. Reg. 48160-01](#), *Prince William Sound and Gulf of Alaska; Restoration Work Plan and Program*.

shoreline. This cleanup program would have been impossible without field studies of Prince William Sound and other historical oil spills. Given the large scale of these catastrophic spills, these studies cannot be reproduced and thus would be barred from use by the EPA by H.R. 1430.

The EPA would be hampered from implementing these vital protections and programs under H.R. 1430. While the bill contains a provision that pretends to skirt some of these legal obstacles by only divulging protected materials to people who sign confidentiality agreements, this provision is illusory because medical data, trade secrets, and other privacy-protected data cannot be released to the general public, regardless of whether they sign a confidentiality agreement. The EPA cannot issue confidentiality agreements on behalf of third party researchers, so H.R. 1430 would inhibit the EPA's ability to use many important scientific studies despite this confidentiality agreement provision.

Further, H.R. 1430 limits the EPA to spending only \$1 million a year to comply with these new requirements, yet the CBO estimated that past versions of this legislation would have cost the EPA up to \$250 million annually to implement the data access provisions required in the bill.⁹ The added obligations specified in this legislation, coupled with a lack of adequate funding to implement the law, would prevent the EPA from fulfilling its hazard prevention and environmental safety protection responsibilities.

Agencies tasked with protecting human health must be able to rely on all available scientific data. Currently, the EPA goes to great lengths to ensure that all of the data it relies on is thoroughly reviewed and accessible. The EPA uses several processes to ensure quality and relevance of data, such as internal and external peer review and review by scientific advisory boards.¹⁰

When the EPA is prohibited from utilizing the most optimal data, it puts the health and safety of citizens at risk. Protecting safe drinking water and healthy air depends on the EPA's ability to incorporate the best available evidence from all scientific fields of study into its risk assessments and regulation drafting processes. [EDGI's analysis and research](#) shows that the passage of H.R. 1430 would block the EPA from using the data it needs to fulfill its mission of protecting public health and the environment.

Sincerely,



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⁹ Congressional Budget Office, *H.R. 1030, Secret Science Reform Act of 2015*, retrievable at <https://www.cbo.gov/publication/50025>.

¹⁰ National Research Council, *SCIENCE AND DECISIONS: ADVANCING RISK ASSESSMENT*. Washington, D.C: National Academies Press, 2009.

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