



EPA 'transparency' rule confuses science and regulatory science

BY SID SHAPIRO, OPINION CONTRIBUTOR — 05/15/18 05:30 PM EDT
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Scott Pruitt's Environmental Protection Agency (EPA) has proposed a rule it claims is related to science transparency. But in a particularly Orwellian twist, it turns out Pruitt is using a claim of "transparency" as a way to obscure his ideological opposition to environmental protection.

The new rule would bar EPA from using in its regulatory process any scientific study for which the underlying data is not completely available to the public, and it anticipates the agency would have to redo any past rules that used scientific studies for which these data were not available. It opens the door to attacks on climate science, toxic contaminant cleanup plans, and clean air standards that have prevented thousands of premature deaths.

Scientific researchers commonly make the data underlying their work available to other scientists who may wish to replicate the study to confirm that they can reach the same results. Even in pure science, however, this practice is not regarded as completely necessary to verify the credibility of studies.

For example, scientific periodicals that publish epidemiological studies do not ask the principal investigators to make all of the underlying information (like the identities and medical records of the participants) available to peer reviewers, and the studies are still accepted by the scientific community. When it comes to regulation, we make trade-offs

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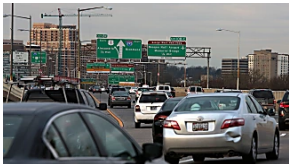
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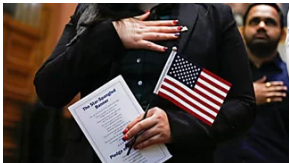
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that are necessary and proper, even some not used in the scientific realm, because there are often life-and-death policy issues involved.

That's why opponents point out, rightly, that Pruitt's plan is a ploy to get rid of the reliable science EPA has used to support past rules and to make it more difficult to adopt new rules that protect the environment and the public.

Tellingly, EPA indicated it might protect the underlying information if it was confidential business data. This means the agency might accept industry-sponsored studies for which the underlying data are not public as long as the corporations that sponsor the studies claim such information is confidential. This would create a transparent double standard that is anti-regulatory in effect: corporate-sponsored "secret science" may be ok, but academic science for which some of the underlying data are not available for legitimate reasons would not be.

This disparate treatment of academic and corporate science lays bare an important insight: Pruitt wants to find a way to rely on corporate science because it is more likely to support his ideological disposition on regulation than unbiased research.

When Congress passed the environmental laws that EPA administers, it recognized that public policy required a different approach to scientific evidence. The goal was and remains to protect people and the environment once scientific evidence indicates that a chemical or other substance is likely to be harmful — to act in the public interest, even while scientists continue to refine our understanding of a chemical's toxicity pathways and full extent of the harm it can cause.

In enacting laws such as the Clean Air Act and the Safe Drinking Water Act, Congress wisely guarded against paralysis by analysis, recognizing the goals of regulation and pure scientific exploration are different. If we waited for definitive proof that a chemical or other substance is harmful, thousands of people may die or be injured as a result of not acting sooner.

This is only one of the policy-based norms that are used in regulatory science — norms that have saved thousands of lives and protected wildlife and our environment. No one pretends that the same norms are appropriate in pure science itself, and this is where Pruitt's proposed rule makes no sense. It is moving a scientific norm into the environmental policy sphere.

To do so, it has to do more than claim this is the way scientists do it. It has to defend this change as a necessary one for regulatory science. It has to present evidence that the past science EPA has used was unreliable because, for reasons of privacy and other legitimate reasons, some of the underlying data was not available. This it has not done, and this it cannot do.

Whether it is for corporate science or academic science, EPA needs a sophisticated, policy-based approach to regulatory science. Pruitt's simplistic equation of scientific norms and regulatory norms does not come close to meeting this requirement.

Sid Shapiro is a professor at Wake Forest University School of Law in Winston-Salem, North Carolina, and vice president of the Center for Progressive Reform. Shapiro is the author of ["Risk Regulation at Risk: Restoring a Pragmatic Approach."](#)

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