

March 28, 2017

Dear Member of Congress,

On behalf of our millions of members and supporters, we strongly urge you to oppose the woefully misnamed “HONEST Act” (H.R. 1430). This bill would put the Environmental Protection Agency (EPA) in an impossible situation – the agency either would have to ignore scientific and technical information relevant to protecting the public or disclose confidential health information and trade secrets. Either way, the public would be harmed.

There is no reason to put EPA (and the public) in such an absurd position. The bill is based on a faulty premise and attempts to solve a problem that does not exist. In reality, EPA regularly cites the studies it uses to make policy decisions, allowing numerous opportunities for public comment. The validity of EPA decisions is then reviewable by the courts. When necessary, the agency reaches agreements with reputable scientific organizations so that studies can be reviewed further.

If the proponents of this bill were being honest about their concerns and purposes, they would acknowledge that their real complaint is that they disagree with EPA’s efforts to protect the public from pollution and that they refuse to accept any science that indicates that safeguards are necessary, no matter how widely reviewed or accepted.

There are good reasons why data from some studies are not widely released. Many of the clinical or epidemiological studies that form the basis for public health standards include patients’ medical records, which are confidential under the Health Insurance Portability and Accountability Act (HIPAA), other patient confidentiality laws or agreements between patients and researchers. These confidentiality safeguards for patient data are routine in medical science. For example, many studies of the dangers of lead poisoning follow patients who have suffered from exposure, and those records would be legally required to be kept confidential. H.R. 1430 would force EPA to ignore key medical science and force the agency to forego safer health standards and more protective risk assessments because EPA may not disclose confidential information in violation of such laws and agreements.

Under the bill, EPA also could be hindered in responding promptly to emergency situations. For example, when Freedom Industries spilled a chemical that contaminated drinking water in West Virginia, the studies on the chemical were not immediately disclosed and the raw data never was. Under this bill, EPA would not have been able to act absent such disclosures. The bill would prevent EPA from taking action because the agency would be barred from acting on the basis of confidential information. Also, the bill could allow industries to control EPA’s response by deciding selectively which information EPA may use to issue a health advisory or a risk or hazard assessment, by claiming that information to be confidential business information (CBI) subject to other statutory protections.

Furthermore, the bill could even make it impossible for EPA to consider, use or rely upon many kinds of economic models, other scientific models and trade secrets that may be proprietary. This could harm businesses because it would stop EPA from adopting regulatory exemptions, less

stringent regulations or flexibility guidance designed to tailor requirements and policies to useful economic information, company-specific costs and feasibility analysis that rely on company-furnished information.

This year's version of the bill attempts to place a fig leaf over its most egregious provisions (it also tries on a new nickname, as apparently "secret science" wasn't fooling anyone). Last year's bill simply prevented the use of confidential information. This year, the bill would require EPA to redact the information – only to *require* EPA to share it with *anyone* (without limit, amazingly) willing to sign a vaguely defined confidentiality agreement. Confidential information (whether health records or trade secrets) that must be released to all comers can hardly be considered protected in any serious meaning of that word. The redaction in the bill is a sham.

Indeed, H.R. 1430 would compel EPA to share confidential corporate trade secrets with any person or entity that requested them, including the trade-secret holding corporation's competitors, domestic or foreign. The bill's stray directive to EPA to develop "guidance" does not cure these ills: that directive gives EPA no statutory criteria and thus any guidance would be subject to challenge and reversal in court, leaving the agency with no ability to control the dissemination of confidential information. Moreover, guidance by definition is not enforceable. Nor is the transgression of guidance, by EPA or any other person, a violation of law. Finally, and most incredibly, the legislation prescribes no penalty or consequence for any person that discloses confidential information after receiving it from EPA. The inescapable problem is the fundamental approach of the bill's disclosure provision is unworkable and makes the redaction provision meaningless.

The bill is also drafted in such a way that it can still affect existing regulations despite its savings clause purporting to prevent that. *Existing* EPA health and environmental standards, regulations, risk assessments and other covered EPA actions that enforce federal statutes suddenly may no longer be "disseminated" under the bill – made available to the public – based on the bill's newly created criteria for scientific and technical information. This irrational, *post hoc* approach would produce chaos, barring EPA from publishing regulations and standards that were lawfully adopted, that regulated entities still are required by law to meet, but that H.R. 1430 indefensibly bars EPA from disseminating.

Another drafting problem could block the use of even more studies. "Substantial reproduction of research results" is an imprecise term that could refer to the ability of scientists to reanalyze or synthesize a body of data that has been developed as part of study, or it could require reproducing the raw or underlying data itself. The first reading of this term makes some sense, whereas the second does not. The latter interpretation of "reproduction of research results" is not considered a scientific standard for epidemiological studies, and it is not one of the components of the Bradford Hill criteria, the generally accepted criteria by which scientists evaluate epidemiology. This is because scientists cannot ethically, intentionally expose people to dangerous substances and must instead design studies based on complex real-world circumstances that are almost impossible to replicate exactly. Instead, scientists rely on rigorous peer-review and the collective understanding synthesized from multiple studies that are all relevant, but are unlikely to be substantial reproductions of each other.

Just as medical ethics require physicians to discontinue a drug trial if people are getting sick, epidemiologic study ethics require prompt action to eliminate emerging threats when disease rates spike. For example, epidemiologic data showing the spread of the Zika virus does not and should not need to be “reproduced” in order to mobilize public health efforts to keep people safe. The National Institutes of Health (NIH) has well-established standards for reproducibility of epidemiological studies. Any new requirements to be imposed on EPA should at a minimum be consistent with the NIH standards. H.R. 1430 is not.

In short the “HONEST Act” would block public protections and upend longstanding protections for private personal and business information, all to solve a problem that doesn’t exist. It would, though, accomplish what appears to be its true goal, to hamstringing EPA to make it less capable of protecting the public. Honestly, this legislation would undermine the EPA’s ability to consider and use valuable science; undermine the confidentiality of patient data, trade secrets, and other private information; and jeopardize public health. We urge you to oppose H.R. 1430.

Sincerely,

American Association for Justice
Clean Water Action
Daily Kos
Earth Action, Inc.
Earthjustice
Institute for Agriculture and Trade Policy (IATP)
League of Conservation Voters (LCV)
Natural Resources Defense Council
Protect Our Winters (POW)
Physicians for Social Responsibility (PSR)
Public Citizen
Rachel Carson Council
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Sierra Club
Waterkeeper Alliance, Inc.