

March 23, 2020

The Honorable Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20004

Dear Administrator Wheeler:

We write to express grave concerns about the Environmental Protection Agency's (EPA) supplemental proposed rule, titled Strengthening Transparency in Regulatory Science, made public on March 3, 2020. (Docket no. EPA-HQ-OA-2018-0259). The supplement to the previous proposed rule does not resolve the serious issues raised by the over 100 Members of Congress, EPA's Science Advisory Board, and 600,000 public comments received when the rule was first introduced in 2018. EPA has chosen to double down on an arbitrary and opaque process that selectively suppresses scientific evidence, and this new rule expands that suppression to all Agency activities involving science. It allows outside stakeholders, including industry, to 'reanalyze' and 'reinterpret' independently conducted research about critical environmental and public health issues, such as water and air quality. We urge you to withdraw this proposed rule immediately.

We express grave concern. Under this rule, EPA would give studies that cannot be 'independently verified' lower priority than those that can be. EPA provides no justification for why the current, successful method to independently verify scientific work must change. Nor is there any analysis at all about how this new process of restricting the use of certain kinds of studies will impact the ability of the agency to meet its mission, serve the public interest and protect public health and safety. In fact there is no substantiating analysis at all. That is the very definition of arbitrary and capricious.

The peer-review process, which is responsible for our nation's global scientific dominance for much of the past century, is exceedingly robust and shows no signs of failure. About two studies out of 10,000 are retracted for fraudulent reasons<sup>1</sup>, and EPA shows no evidence that this low retraction rate, approximately 0.04%, is a hindrance towards the Agency's statutory obligations. This rule gives EPA unreasonable power to circumvent the peer-review process, and thus the scientific enterprise in general, and will lead to the unjustifiable exclusion of valid and critical scientific information necessary for environmental protection.

The proposed rule change does not address the statutory conflict highlighted in our past letter of concern. By implementing a 'prioritization' scheme in which some science is arbitrarily and unscientifically given more merit than others, EPA will be forced to make decisions that do not entirely rely on the best available science.

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<sup>1</sup> <https://www.sciencemag.org/news/2018/10/what-massive-database-retracted-papers-reveals-about-science-publishing-s-death-penalty>

While the Administration has altered the language in this rule regarding the dissemination of confidential data, it has not resolved any of the associated problems. The creation of a convoluted 'tiered-access' system, in which data that cannot be made public is only selectively shared, does not address the underlying concern that there is a wealth of public health data that simply cannot be legally shared in any context. The standard EPA is creating would result in those data being unjustifiably excluded from EPA's work—data that, for example, could contain vital public health information about the nature of chemical pollutants or the impact of pollution on communities. In our previous letter, we highlighted the "Six Cities" study, which followed more than 8,000 participants over twenty years to establish a link between chronic air pollution exposure and death rates<sup>2</sup>. This study, which has stood up to independent scrutiny, and hundreds of others just like it are critical for EPA to fulfill its mission. However, because the identities of the participants in the study are confidential, under this rule change, it would be unreasonably excluded. EPA would not only be unable to draw from one of the most comprehensive public health studies ever conducted to better protect American citizens; they would be prevented from using countless other studies that would be indispensable to their review. That is simply unacceptable.

Enacting these rules would also place an enormous and unnecessary cost burden on EPA at a time when the President is proposing drastic cuts to the Agency's budget. EPA internally estimated that implementing the data access policies required in a similar proposal, the HONEST Act, would cost more than \$250 million annually<sup>3</sup>. Given that EPA is looking to cut its own budget by 17 percent this fiscal year, it seems clear that the Administration has made it a priority to downsize wherever possible. It is therefore confusing that EPA would willingly subject itself to such a large new budget line item when experts overwhelmingly agree that it is not necessary. These funds could do much more good for the American people if they are used to fund any of the many programs that the Administration is requesting to eliminate.

EPA may claim that this iteration of the rule is an improvement from previous iterations, because instead of explicitly rejecting studies as the 2018 rule did, it simply prioritizes studies based on their data availability. This claim is false for multiple reasons. First, studies that survive peer review cannot be 'more true' or 'less true'. Thus, given that no such approach is taken in any other scientific enterprise, it is unclear how a 'low-priority' study would even be treated. There are no guidelines for how to consider a 'low-priority' study in this rule. It is possible, in the reading of the rule as it is, that they could simply be excluded, just as the last rule required.

Second, this new rule extends this data policy to "all influential science" at the Agency, rather than science only used for regulatory efforts as the 2018 rule intended. Thus, this rulemaking expands, rather than diminishes, a crucial problem that our prior letter addressed.

Finally, it is telling that EPA has shortened the comment period for this rule to only 30 days. As mentioned earlier, a previous iteration of this rule elicited 600,000 public comments, and the great majority of those comments were in strong opposition to the rule. It is disturbing that,

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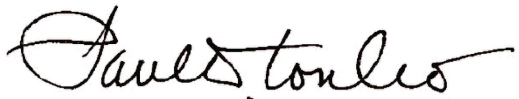
<sup>2</sup> *Ecology Ctr., Inc. v. U.S. Forest Serv.*, 451 F.3d 1183, 1194 n.4 (10<sup>th</sup> Cir. 2006)

<sup>3</sup> <https://www.sciencemag.org/news/2018/04/trump-s-epa-wants-stamp-out-secret-science-internal-emails-show-it-harder-expected>

against a wave of such strong public outrage, EPA would respond by reducing the opportunity for comment, rather than responding to these concerns.

For seemingly arbitrary reasons, EPA is willfully blindfolding itself, and such blindfolding will have tragic human consequences. This rule will allow EPA to ignore the necessary science that protects American communities from poisoned drinking water and polluted air, and such ignorance will put Americans' health at risk. We find this completely unacceptable, and we strongly urge you to withdraw this proposed rule and return EPA's resources to actions that better serve its mission.

Sincerely,



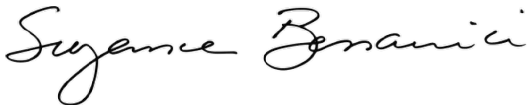
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Paul Tonko



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Diana DeGette



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Suzanne Bonamici



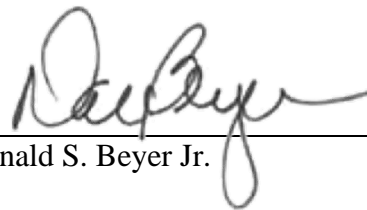
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Mikie Sherrill



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Sean Casten



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Donald S. Beyer Jr.



Nanette Diaz Barragán



Ami Bera, M.D.



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Lisa Blunt Rochester



Julia Brownley



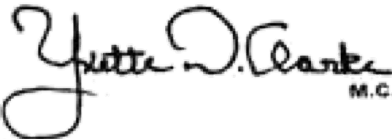
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Tony Cárdenas



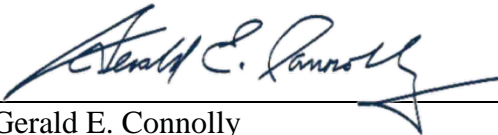
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M.C.

Yvette D. Clarke



Steve Cohen



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Charlie Crist



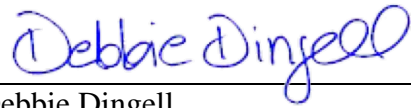
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Peter A. DeFazio



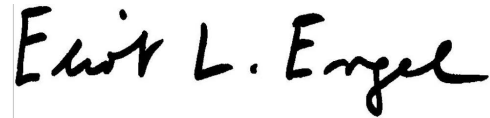
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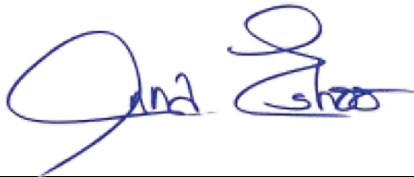
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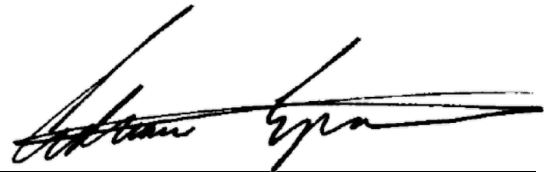
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Anna G. Eshoo



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Bill Foster



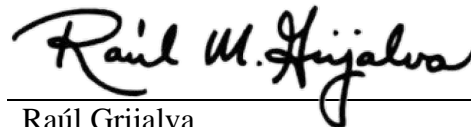
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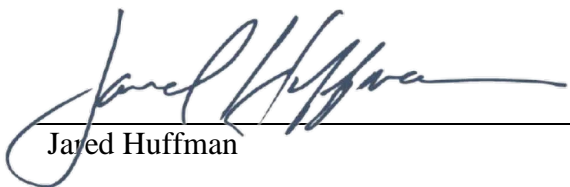
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Deb Haaland



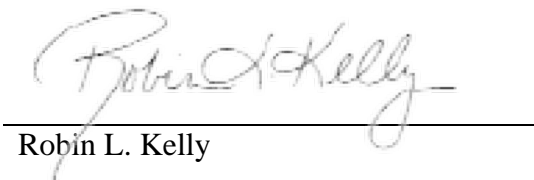
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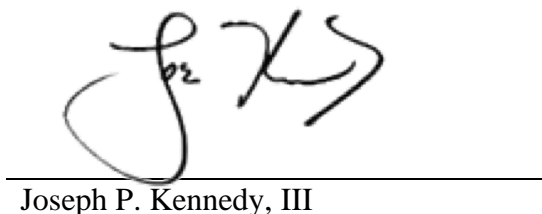
  
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Pramila Jayapal

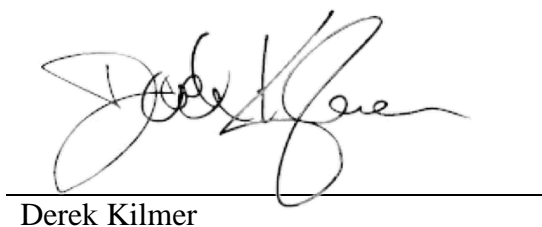
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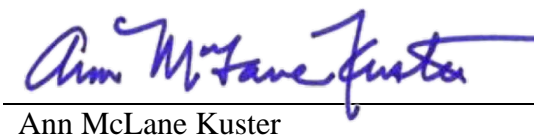
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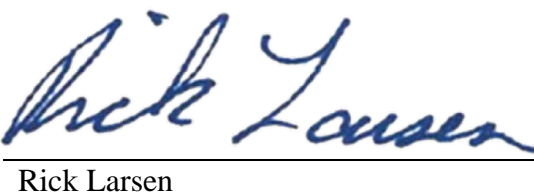
  
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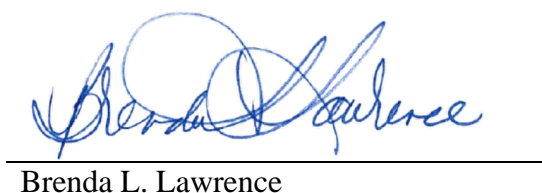
  
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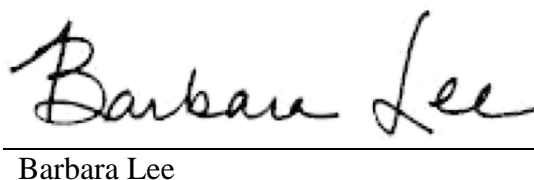
  
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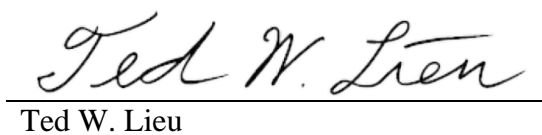
  
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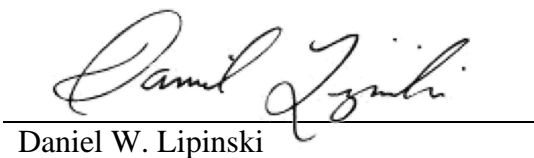
  
James R. Langevin

  
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Brenda L. Lawrence

  
Barbara Lee

  
Ted W. Lieu

  
Daniel W. Lipinski



Alan Lowenthal



Doris Matsui



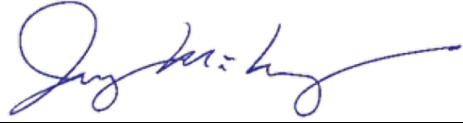
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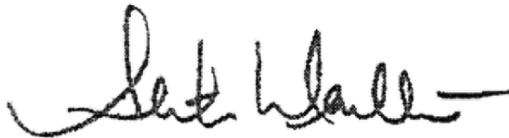
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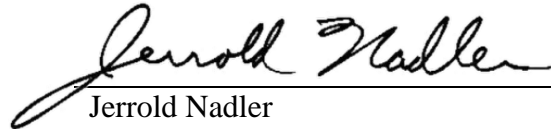
James P. McGovern



Jerry McNerney



Seth Moulton



Jerrold Nadler



Grace F. Napolitano



Joe Neguse



Eleanor Holmes Norton



Chris Pappas



Ed Perlmutter



Scott Peters





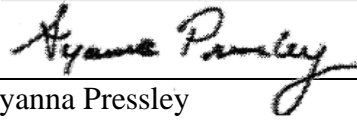
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Mark Pocan



Katie Porter



Ayanna Pressley



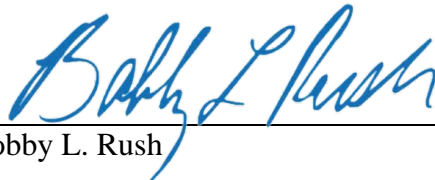
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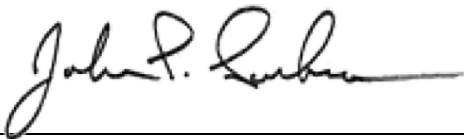
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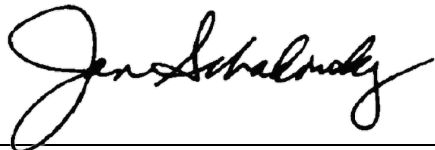
Jamie Raskin



Bobby L. Rush



John P. Sarbanes



Jan Schakowsky



Adam B. Schiff

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Robert C. "Bobby" Scott



Darren Soto




Jackie Speier






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Hayley M. Stevens



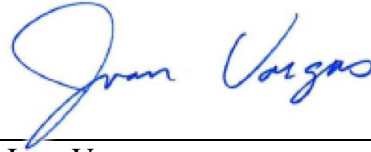
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Thomas R. Suozzi



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Mark Takano



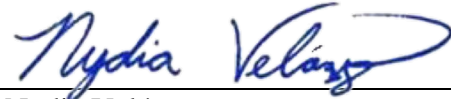
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Juan Vargas



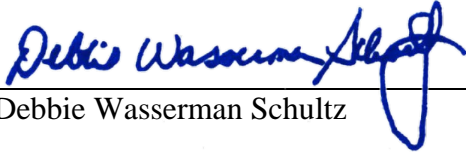
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Marc Veasey



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Nydia Velázquez




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Debbie Wasserman Schultz



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Peter Welch



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Jennifer Wexton