

SIGN IN TO YOUR SUBSCRIPTIONS/ACCOUNT

NEWS

May 16, 2017

Scorned Law May Be Environmentalists' Tool to Protect EPA Data

From [Daily Environment Report™](#)

FREE TRIAL

Turn to the nation's most objective and informative daily environmental news resource to learn how the United States and key players around the world are responding to the environmental...

By [Rachel Leven](#)

A law long scorned by environmentalists may now be a tool for protecting information on the EPA's website as the Trump administration purges references to climate change.

Progressives have dismissed the Data Quality Act as a tool for industry groups to poke holes in information in government reports and reviews. But now the father of the law says environmentalists are quietly approaching him about the possibility of turning the law on a White House that has taken down information from the Environmental Protection Agency website, including a climate science page that stated, "It is extremely likely that human activities have been the dominant cause of the warming."

“They’re sort of walking timidly up to the confessional,” Jim Tozzi, who founded the Center for Regulatory Effectiveness to oppose overreaching regulation, told Bloomberg BNA.

But the Data Quality Act is far from a sure fire win for these groups, attorneys said. The law is intended to ensure agencies would have to respond to public concerns related to press releases, reports and more—actions that wouldn’t constitute “final agency actions” in court. It allows the public to petition federal agencies to correct perceived deficiencies in government data. But still unclear is whether courts can enforce the law’s requirements.

The EPA has recently been updating its website, including deleting pages related to climate change, much to the concern of scientists and other climate advocates. The EPA didn’t respond to Bloomberg BNA’s message requesting comment. There are few other laws in place that set boundaries on what the EPA can and can’t do with its website and data, attorneys said. One attorney says that is partially because the EPA hasn’t previously needed laws to guide what data will or won’t appear on its website.

“Stronger laws haven’t been needed before,” Romany Webb, an attorney at the Sabin Center for Climate Change Law at Columbia Law School, told Bloomberg BNA. “Hopefully, the culture of transparency will continue, but that remains to be seen.”

Would It Be Successful?

If environmental groups choose to use the Data Quality Act, they would be taking up a tool commonly used by industry groups.

Requests received in the initial years following the law’s passage—from 2002 to 2005—ranged from one by the [Cooler Heads Coalition](#) in 2003 to remove the U.S. Climate Action Report 2002 from its website to one from the [Center for Regulatory Effectiveness and the American Chemistry Council](#) saying a proposal to require disclosure of the chemical diisononyl phthalate in the Toxics Release Inventory was flawed and should be redone.

The [Office of Management and Budget](#) and then [EPA](#) wrote guidelines for implementing the law that distinguish between highly-influential and other types of information, and provide ways to request changes to information releases. The EPA has

60 days to respond to any requests for corrections made under the Data Quality Act, which can be appealed to the agency's chief information officer and ultimately to the courts.

Then it gets murky. No court has yet found the act to be judicially reviewable. For example, Sidney Shapiro, vice president of the Center for Progressive Reform, pointed to a March 2006 U.S. Court of Appeals for the Fourth Circuit decision in *Salt Inst. v. Leavitt*, that found the Salt Institute couldn't establish that it had grounds to bring the lawsuit.

"It basically means all you can do is complain to the agency," Shapiro told Bloomberg BNA. "But other than the White House enforcement, there's no enforcement."

But Tozzi, who worked at OMB under five presidential administrations, and Karl Bourdeau, a principal in the Washington office of Beveridge & Diamond, P.C., said this isn't a settled issue.

Bourdeau pointed to a separate ruling by the U.S. Court of Appeals for the District of Columbia Circuit in *Prime Time International Co. v. Vilsack*, where the court reviewed an agency decision under the Act in a 2010 lawsuit against the U.S. Department of Agriculture "without ever saying it had jurisdiction."

"It's a huge issue because if it can be judicially reviewed, then you can hold the agency's feet to the fire," Bourdeau said. "If not, it's kind of a paper tiger."

Even Shapiro said it could be different for environmentalists given the scientific consensus surrounding climate change, although he added, "I think most groups don't want to legitimize it as a tool that industry could use to attack the information or data behind the preventative actions by agencies."

Other Options

Other options are limited, attorneys said. Laws from the E-Government Act of 2002 (Pub. L. No. 107-347) to the Freedom of Information Act (Pub. L. No. 104-231) tell the government to post policies and processes, disclose certain grants and give the public additional information, when requested.

However, these laws are generally broad and don't dictate that the EPA must use its website the way it has been used, Webb said. For example, the EPA has generally become a hub of climate data and information for scientists and the public.

But outside of regulations, that kind of information no longer needs to be housed on the EPA website, she said.

An influx of Freedom of Information Act requests flooding the EPA for data and documents related to past internal deliberations is expected, Webb said. And while some are banking on the Data Quality Act as a path forward of opposition, “it doesn’t look like a particularly fruitful path to go down” given past rulings by federal courts that the actions can’t be judicially reviewed.

In the past, the EPA has operated under a 1983 “ [fishbowl memorandum](#)” that says communicate with everyone and do so openly, Webb said. But it’s too soon to tell what this EPA will do of its own volition on this front, she said.

“We don’t know what the new website is going to be like,” Webb said.

To contact the reporter on this story: Rachel Leven in Washington at rleven@bna.com

To contact the editor responsible for this story: Paul Connolly at PConnolly@bna.com

Copyright © 2017 The Bureau of National Affairs, Inc. All Rights Reserved.

Try **Daily Environment Report™** now



RELATED NEWS

Judge Sides With Ex-EPA Employee in Monsanto Cancer Suit
Will Pruitt Harpoon Climate Doubters' 'Great White Whale'?
Vietnam Air at 'Danger Point' Could Threaten Economic Revival
3M, Carpet Industry Face Growing Alabama Water Suits

RELATED BLOGS

Week Ahead: Congress, Industry Groups Dig Into Infrastructure
Week Ahead: Methane Rule Repeal Expected to Surface in Senate
PODCAST: If NAFTA Is Done, No Tears from Environmentalists
Week Ahead: EPA Seeks Deregulatory Input

Heat Is on for California Worker Protections

Environmental News to Watch Week of April 24

Rate of EPA Chemical Regulation Ramps Up Since Toxics Law Update

The Protesters Came With Oranges

BROWSE MORE LEGAL NEWS



BROWSE MORE TAX & ACCOUNTING NEWS



BROWSE MORE EHS NEWS



BROWSE MORE HR & PAYROLL NEWS



RELATED PRODUCTS



SUBSCRIPTION

Environment & Safety Resource Center™

The Environment & Safety Resource Center™ combines powerful, easy-to-use, compliance tools and analysis with continuously updated federal and state laws, regulations, and...

LEARN MORE

Environmental and Safety on Bloomberg Law

With expert environmental and safety news, along with analysis, books, and more, you'll provide optimal advice to your clients. It's comprehensive coverage of the environment and safety space,...

[LEARN MORE](#)

COMPANY

[About Us](#)

[Contact Us](#)

[Careers](#)

[Media](#)

BLOOMBERG BNA

[Bloomberg Law](#)

[Environment, Health & Safety](#)

[Marketing Services](#)

[Tax & Accounting](#)

[Human Resources & Payroll](#)

Bloomberg
BNA