

## E.P.A.'s Final Deregulatory Rush Runs Into Open Staff Resistance



By Lisa Friedman

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WASHINGTON — President Trump's Environmental Protection Agency was rushing to complete one of its last regulatory priorities, aiming to obstruct the creation of air- and water-pollution controls far into the future, when a senior career scientist moved to hobble it.

Thomas Sinks directed the E.P.A.'s science advisory office and later managed the agency's rules and data around research that involved people. Before his retirement in September, he decided to issue a blistering official opinion that the pending rule — which would require the agency to ignore or downgrade any medical research that does not expose its raw data — will compromise American public health.

"If this rule were to be finalized it would create chaos," Dr. Sinks said in an interview in which he acknowledged writing the opinion that had been obtained by The New York Times. "I thought this was going to lead to a train crash and that I needed to speak up."

With two months left of the Trump administration, career E.P.A. employees find themselves where they began, in a bureaucratic battle with the agency's political leaders. But now, with the Biden administration on the horizon, they are emboldened to stymie Mr. Trump's goals and to do so more openly.

The filing of a "dissenting scientific opinion" is an unusual move; it signals that Andrew Wheeler, the administrator of the E.P.A., and his politically appointed deputies did not listen to the objections of career scientists in developing the regulation. More critically, by entering the critique as part of the official Trump administration record on the new rule, Dr. Sinks's dissent will offer Joseph R. Biden Jr.'s E.P.A. administrator a powerful weapon to repeal the so-called "secret science" policy.

E.P.A. career employees this month also quietly emailed out the results of a new study concluding that the owners of half a million diesel pickup trucks had illegally removed their emissions control technology, leading to huge increases in air pollution. And some senior E.P.A. staff members have engaged in back-channel conversations with the president-elect's transition team as they waited for Mr. Trump to formally approve the official start of the presidential transition, two agency employees acknowledged.

Current and former E.P.A. staff and advisers close to the transition said Mr. Biden's team has focused on preparing a rapid assault on the Trump administration's deregulatory legacy and re-establishing air and water protections and methane emissions controls.

"They are focused like a laser on what I call the 'Humpty Dumpty approach,' which is putting the agency back together again," said Judith Enck, a former E.P.A. regional administrator who served in the Obama administration.

The transition team is particularly focused on renewing efforts to tackle climate change, which had been crushed by the Trump administration and mocked by Mr. Wheeler as little more than "virtue signaling" to foreign countries. There also are plans to revamp scientific advisory boards that Mr. Wheeler and his predecessor, Scott Pruitt, had stacked with allies of private industry and purged of many academic scientists.

"They seem hyper-focused on what it's going to take to get things back on track," said Chris Zarba, former director of the E.P.A.'s science advisory board, adding, "I think they're going to do a full reset."

Racing against those efforts is Mr. Wheeler, who has a long list of priorities that aides and confidants said he is determined to complete before Inauguration Day on Jan. 20. He has also maneuvered legally to erect time-consuming hurdles that Mr. Biden will have to clear to unwind some Trump administration policies.

At the top of Mr. Wheeler's to-do list is finalizing the science rule, officially called "Strengthening Transparency in Regulatory Science."



E.P.A. administrator Andrew Wheeler has been working to erect time-consuming hurdles that Mr. Biden will have to clear to unwind some Trump administration policies. Pool photo by Al Drago

Under it, the agency would have to dismiss or give less weight to scientific studies that fail to release all their raw data to the public. Mr. Wheeler says the rule's opponents prefer that regulatory decisions be made in "a back room, a proverbial smoke filled room."

But thousands of medical and scientific organizations say the plan would cripple the E.P.A.'s ability to create new air and water protections because people who participate in epidemiological or long-term health studies that examine exposure to toxins typically take part only if their personal health information is kept private.

The E.P.A. under Mr. Wheeler has argued that it can create data protections to secure personal information like home addresses and medical records. But Dr. Sinks, who was the only agency scientist who worked to establish that data security, said the agency lacks the technical expertise and funding to succeed.

"Human subjects research is the most predictive data for establishing the human health impact from environmental exposures," Dr. Sinks wrote, adding, "Any rule or guidance that diminishes or removes high quality research from consideration in rule making results in poorly developed rules."

Thomas A. Burke, a professor at the Johns Hopkins Bloomberg School of Public Health who served as E.P.A. science adviser in the Obama administration, expressed amazement at Dr. Sinks's dissent.

"It speaks volumes about the failure of the process and the failure of the administration to listen not just to this one person but to the broader scientific leadership in the United States," he said. Mr. Burke called the rule "a very thinly-veiled dream rule for polluters."

James Hewitt, a spokesman for the E.P.A., said in a statement that Dr. Sinks's objections were "irrelevant." He accused Dr. Sinks, without presenting evidence, of failing to follow agency "protocol for raising concerns" and also said Dr. Sinks did not read the most recent draft of the rule before filing his dissent. Mr. Hewitt also did not explain why such a high-ranking career scientist was not provided the final draft of the rule.

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"The purpose of the science transparency rule is to codify internal procedural requirements for how the E.P.A. will consider the availability of data that it relies upon in developing its final significant regulatory actions and influential scientific information," Mr. Hewitt said.

Mr. Wheeler in these final months also sidestepped a promise he made to the E.P.A. inspector general to address accusations from more than 250 employees about political interference with science under the Trump administration.

Mr. Wheeler had agreed to determine the reasons for the concerns about a culture of disregard for scientific integrity and “tone at the top” of the agency by Sept. 30. He did not.

Instead he issued a memo in November affirming the agency’s support for its 2012 scientific integrity policy. But even that document was watered down. The final version eliminated language that assured science would occur “without political interference, coercion of scientists or regard to risk management implications,” according to a document of tracked changes reviewed by The New York Times.

Mr. Hewitt in a statement said that memo did not affect the underlying scientific integrity policy.

Of Mr. Wheeler’s broader agenda over the next two months, he said, “E.P.A. continues to advance this administration’s commitment to meaningful environmental progress while moving forward with our regulatory reform agenda.”

The E.P.A. also is expected to finalize in the coming weeks a rule on industrial soot pollution, which is linked to respiratory diseases, including those caused by the coronavirus. The rule is expected to leave in place a 2012 standard on fine soot from smokestacks and tailpipes, known as PM 2.5, ignoring the E.P.A.’s own scientists, who wrote last year that the existing rule contributes to about 45,000 deaths per year from respiratory diseases, and that tightening it could save about 10,000 of those lives.

In April, a study published by researchers at Harvard linked long-term soot exposure and Covid-19 death rates. The study found that a person living for decades in a county with high levels of fine particulate matter is 15 percent more likely to die from the coronavirus than someone in a region with one unit less of the fine particulate pollution.

The E.P.A. is expected to finalize soon a rule on industrial soot pollution, leaving in place a 2012 standard that ignores recent analysis that a rule change could save 10,000 lives a year. Brian Snyder/Reuters

And last month, the agency finalized a rule that creates a lengthy new legal process to overturn or withdraw certain policy directives known as “guidance documents,” which give federal agencies direction on the specifics of how to enforce laws.

Such guidance documents can give an administration some license to interpret laws in ways that advance their policy agenda. For example, the E.P.A. during the Trump administration has published a guidance document that allows oil and gas companies to release flares from their wells for up to 15 minutes at a time before regulations apply — a process that releases methane, a powerful planet-warming greenhouse gas.

Another guidance document allows polluting entities with several adjacent polluting buildings on the same site, such as power plants and factories, to report the separate buildings as smaller individual pollution sources, rather than report the total pollution levels of the overall site. That could allow the polluters to avoid pollution control requirements that would be triggered by reporting the larger amount of pollution attributed to the larger site.

These types of documents are not legally binding, but they do stand as the official policy of a government agency until they are formally withdrawn or changed. Under the new guidance document rule, the E.P.A. would have to formally issue a new regulation in order to withdraw the guidance — a lengthy legal process that can take months or even years, meaning that until it is complete, those Trump guidance documents will stand as the official policies of the Biden administration.

Jody Freeman, a professor of environmental law at Harvard and a former adviser to the Obama administration, called the rule a “little I.E.D.,” referring to an improvised explosive device, or roadside bomb, aimed at slowing a Biden administration’s plans to overturn Mr. Trump’s rules.

“Shenanigans like these are what awaits the Biden team,” she said.

Coral Davenport contributed reporting.