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ATTORNEY GENERAL MADIGAN OPPOSES U.S. EPA PLAN TO CENSOR AGENCY SCIENCE***Madigan & Coalition Say Proposed Rule by Former Administrator Scott Pruitt Limits Scientific Evidence & Undermines Foundation of EPA's Environmental & Public Health Protections***

Chicago — Attorney General Madigan today joined with 23 states, counties and cities to call on the U.S. Environmental Protection Agency (EPA) to withdraw a “harmful and deeply flawed” proposal to censor science at the agency. Madigan and the coalition submitted comments on the proposed “Strengthening Transparency in Regulatory Science” rule.

Madigan and the coalition said that the proposed rule would exclude from EPA decision-making any scientific studies, models, and other important information that have been validated by peer review simply because not all underlying data are available to the public. Madigan and the coalition charge that, in addition to making “little sense as a matter of science,” the proposal is “arbitrary and capricious, violates controlling federal law, and contains clear errors in reasoning.” Madigan and the coalition said that they “stand ready to pursue legal remedies should EPA persist in this misguided effort.”

“The EPA is again attempting to address a ‘problem’ that does not exist,” Madigan said. “This misguided and poorly conceived attempt to censor and undermine established science would hinder EPA’s mission to protect the public’s health and the environment.”

In their comments, Madigan and the coalition argue that the EPA is legally prohibited from adopting the proposed rule because it directly conflicts with statutory requirements regarding the EPA’s consideration of scientific information. No federal environmental statute directly allows – or even suggests – that the EPA can ignore the “latest” or “best” or “appropriately designed and conducted” scientific studies whenever the underlying data are not public. As prominent scientific organizations have noted, peer review of scientific evidence is routinely performed despite the underlying data not being publicly available, as there are often very good reasons – such as the protection of personal privacy and confidentiality, and proprietary interests and property rights – why some research data simply cannot be made fully available.

By compromising the EPA’s ability to use the latest, best available and generally accepted science, Madigan and the coalition contend that the proposed rule would violate the federal laws that EPA is required to uphold – including the Safe Drinking Water Act; the Clean Water and Air Acts; the Comprehensive Environmental Response, Compensation, and Liability Act; the Toxic Substances Control Act; and other core environmental and public health statutes.

Madigan and the coalition also contend that the proposal fails to meet fundamental legal requirements for a valid rulemaking under the federal Administrative Procedure Act (APA), as it is too vague, conclusory and conditional to allow for meaningful public participation. The coalition also charges that the EPA’s failure to consult with scientific experts – including its own internal science advisory board – conflicts with the APA’s fundamental requirement that an agency developing a proposed rule consult with persons having expertise regarding the subject matter of the proposal.

Joining Madigan in submitted the comments were the attorneys general of California, Connecticut, Delaware, the District of Columbia, Iowa, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, and Washington, as well as the Secretary of the Pennsylvania Department of Environmental Protection, the attorneys of King County, Washington, and the cities of Chicago, Los Angeles, New York, Oakland, Philadelphia, and San Francisco.

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