Message

**From:** Conrad, Daniel [conrad.daniel@epa.gov]
**Sent:** 1/28/2021 9:08:53 PM
**To:** Simons, Andrew [Simons.Andrew@epa.gov]; OGC CCILO MGMT [OGC_CCILO_MGMT@epa.gov]; Chaudhary, Dimple [Chaudhary.Dimple@epa.gov]; Hoffer, Melissa [Hoffer.Melissa@epa.gov]
**Subject:** RE: Court decision on EPA 'secret science' rule

Thanks based on that info does the following make sense, staring with the ORD portion and adding the underlined for OGC:

**Ex. 5 AC/AWP/DP**

Daniel H. Conrad
Acting Associate Deputy General Counsel
U.S. Environmental Protection Agency
Office of General Counsel
Office: (202) 564-0903
Cell: (202) 507-2946

*CONFIDENTIALITY NOTICE: This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.*

**From:** Simons, Andrew <Simons.Andrew@epa.gov>
**Sent:** Thursday, January 28, 2021 4:03 PM
**To:** Conrad, Daniel <conrad.daniel@epa.gov>; OGC CCILO MGMT <OGC_CCILO_MGMT@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
**Subject:** RE: Court decision on EPA 'secret science' rule

Dan – thanks for your patience (and parrying OPA).

**Ex. 5 AC/AWP/DP**

Andrew Simons
Acting Associate General Counsel
Cross-Cutting Issues Law Office
U.S. Environmental Protection Agency
Tel. 202-564-3649
WJC-N 7526E

*CONFIDENTIALITY NOTICE: This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.*

Please consider the environment before printing this email.

**From:** Conrad, Daniel <conrad.daniel@epa.gov>
**Sent:** Thursday, January 28, 2021 3:08 PM
**To:** OGC CCILO MGMT <OGC_CCILO_MGMT@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
**Subject:** RE: Court decision on EPA 'secret science' rule

I got pinged by OPA again on this one. Ex. 5 AC/AWP/DP

Daniel H. Conrad
Acting Associate Deputy General Counsel
U.S. Environmental Protection Agency
Office of General Counsel
Office: (202) 564-0903
Cell: (202) 507-2946

*CONFIDENTIALITY NOTICE: This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.*

**From:** Conrad, Daniel
**Sent:** Thursday, January 28, 2021 1:14 PM
**To:** OGC CCILO MGMT <OGC_CCILO_MGMT@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Hoffer, Melissa <Hoffer.Melissa@epa.gov>
**Subject:** FW: Court decision on EPA 'secret science' rule

Ex. 5 AC/AWP/DP

-Dan

Daniel H. Conrad
Acting Associate Deputy General Counsel
U.S. Environmental Protection Agency
Office of General Counsel
Office: (202) 564-0903
Cell: (202) 507-2946

*CONFIDENTIALITY NOTICE: This message may contain deliberative, attorney-client, or otherwise privileged material. Do not release this message under FOIA without appropriate review. If you are not the intended recipient, or the employee or agent responsible to deliver it to the intended recipient, please contact the sender and delete all copies.*

**From:** Fitzpatrick, Kacey <Fitzpatrick.Kacey@epa.gov>
**Sent:** Thursday, January 28, 2021 12:13 PM
**To:** Sullivan, Melissa <sullivan.melissa@epa.gov>; Conrad, Daniel <conrad.daniel@epa.gov>
**Cc:** Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Vasko, Jacqueline <Vasko.Jacqueline@epa.gov>
**Subject:** RE: Court decision on EPA 'secret science' rule

Hi Melissa,

Here's is ORD's part of the statement. Carolyn and Jennifer approved. Can OGC weigh in on the first part? Redacted
Redacted

Ex. 5 Deliberative Process (DP)

**Kacey Fitzpatrick**
Science Communication
Office of Research and Development
U.S. Environmental Protection Agency
Office: 202-564-4086
Cell: 202-701-8634

---

**From:** Sullivan, Melissa <sullivan.melissa@epa.gov>
**Sent:** Thursday, January 28, 2021 10:07 AM
**To:** Conrad, Daniel <conrad.daniel@epa.gov>; Hubbard, Carolyn <Hubbard.Carolyn@epa.gov>; Fitzpatrick, Kacey <Fitzpatrick.Kacey@epa.gov>; Vasko, Jacqueline <Vasko.Jacqueline@epa.gov>
**Subject:** Fwd: Court decision on EPA 'secret science' rule

Good morning,

We have received a few inquiries about the ruling.

Do you all have a statement on this?

Thank you,
Melissa

Begin forwarded message:

> **From:** Rachel Frazin <rfrazin@thehill.com>
> **Date:** January 28, 2021 at 9:17:56 AM EST
> **To:** Press <Press@epa.gov>
> **Subject: Court decision on EPA 'secret science' rule**
>
> Hi everyone,
>
> Does the EPA want to comment on this court ruling?
>
> Best,
> Rachel Frazin
> Energy and Environment Reporter, The Hill
> 561-212-2815
>
> ---------- Forwarded message ---------
> From: **Sharyn Stein** <sstein@edf.org>
> Date: Wed, Jan 27, 2021 at 10:27 PM
> Subject: Court Rules Trump Administration's Censored Science Rule Was Issued Unlawfully
> To: <rfrazin@thehill.com>

**NEWS RELEASE**

**Contact:**
Sharyn Stein, 202-905-5718, sstein@edf.org

## Court Rules Trump Administration's Censored Science Rule Was Issued Unlawfully

(Great Falls, MT – January 27, 2021) A federal district court ruled today that the Trump administration was wrong to issue its Censored Science Rule without following proper procedures, and said that its decision also "casts into significant doubt" whether the rule has any legal basis at all.

The U.S. District Court for the District of Montana's decision increases the odds that the harmful and highly controversial rule won't survive lawsuits opposing it, and opens the door for EPA to suspend the rule until the courts finish hearing those lawsuits.

"The Trump administration broke the law by issuing a harmful rule to censor life-saving medical science, and broke the law again by trying to make the rule immediately effective," said EDF senior attorney Ben Levitan. "The Censored Science Rule weakens EPA's ability to protect Americans from dangerous pollution, toxic chemicals and other threats. Today's ruling delays the rule's effective date, and also undercuts the legal basis for issuing the rule at all. We'll also keep fighting to get this rule off the books for good."

"This is a great day for science and public health. It's a relief to have a court agree that the previous administration acted illegally in its parting shot at science and basic public health protections. We can all breathe easier. Literally," said Anne Hedges, director of policy and legislative affairs for the Montana Environmental Information Center.

The ruling came on the same day that President Biden issued a memorandum saying that it will be the "policy of my Administration to make evidence-based decisions guided by the best available science and data."

Trump EPA Administrator Andrew Wheeler rushed the Censored Science rule to the finish line just days before leaving office. The rule would undermine the agency's ability to protect public health and the environment by fundamentally transforming the ways in which EPA may consider scientific evidence. It would restrict EPA's ability to use rigorous, peer-reviewed medical research for which underlying data are not publicly available – even when legal and ethical rules, like medical privacy laws, would prohibit making that data public.

Wheeler tried to make the Censored Science Rule effective immediately upon its publication in the Federal Register. However, the law clearly requires that substantive rules have an effective date of "not less than 30 days" after publication. If Wheeler had followed the proper protocols, the rule would not yet have been effective when the Biden EPA took over. Wheeler's end run around the proper procedures was an effort to tie the hands of the incoming administration.

EDF, the Montana Environmental Information Center, and Citizens for Clean Energy filed a lawsuit with the U.S. District Court for the District of Montana challenging Wheeler's undue haste. The groups also argued that rule was "substantive" even though it was issued under a statute that cannot be used for substantive rules.

Today the court granted the groups' motion for summary judgment, and sent a strong signal that it is inclined to find the rule unlawful on the merits, saying:

"The Court's above determination that the Final Rule represented a substantive rule rather than procedural rule casts into significant doubt whether EPA retains any legal basis to promulgate the Final Rule." (*Decision, page 30*)

Today's decision also allows the groups to petition the Biden EPA to stay the rule during the rest of the litigation.

###

*One of the world's leading international nonprofit organizations,* ***Environmental Defense Fund*** *(edf.org) creates transformational solutions to the most serious environmental problems. To do so, EDF links science, economics, law, and innovative private-sector partnerships. With more than 2.5 million members and offices in the United States, China, Mexico and the European Union, EDF's scientists, economists, attorneys and policy experts are working in 23 countries and across the E.U. to turn our solutions into action. Connect with us on Twitter @EnvDefenseFund*

If you would rather not receive future communications from Environmental Defense Fund, let us know by clicking here.
Environmental Defense Fund, 257 Park Avenue South, New York, NY 10010 United States