

# *Trump's Environmental Rollbacks Find Opposition Within: Staff Scientists*

Federal scientists and lawyers, told to undo regulations that some have worked on for decades, have embedded data into technical documents that environmental lawyers are using to challenge the rollbacks.

The Environmental Protection Agency's headquarters in Washington.



**By Coral Davenport**

Ms. Davenport has covered federal environmental policy since the George W. Bush administration.

March 27, 2020

WASHINGTON — President Trump has made rolling back environmental regulations a centerpiece of his administration, moving to erase Obama-era efforts ranging from landmark fuel efficiency standards and coal industry controls to more routine rules on paint solvents and industrial soot.

But all along, scientists and lawyers inside the federal government have embedded statistics and data in regulatory documents that make the rules vulnerable to legal challenges. These facts, often in the technical supporting documents, may hand ammunition to environmental lawyers working to block the president's policies.

Trump administration loyalists see in the scientists' efforts evidence that a cabal of bureaucrats and holdovers from previous administrations is intentionally undermining the president and his policies. And there can be little doubt that some career scientists are at odds with the president's political appointees.

But current and former federal employees who work on environmental science and policy say their efforts to include these facts are a civic and professional duty, done to ensure that science informs policy outcomes and protects the public. Some are trying to preserve regulations they spent years of their lives writing.

“You work hard on stuff that is good for the world, for a long time, for years, and then it's trashed, and you're told you have to participate in trashing it,” said Kathy Kaufman, a clean air policy expert who retired from the E.P.A. in 2017 after 29 years. “You're in a difficult position, and you know you have to figure out what to do.”



Kathy Kaufman retired from the E.P.A. in 2017 after 29 years. Madeline Gray for The New York Times

Examples of employees figuring out what to do were pointed out in interviews with over two dozen former and current employees.

**Take fine soot.** The current rules, written during the Obama administration, are now up for review, and Trump administration appointees do not want to further tighten controls on the industrial pollutant, which contributes to lung disease. But in a draft analysis of the soot regulations, scientists included data showing that by tightening the existing standard by 25 percent, as many as 12,150 lives could be saved a year. That data may be a powerful weapon for promised legal challenges to the stay-the-course soot rule.

Climate change is another case in point. In 2018, when the Environmental Protection Agency proposed reversing an Obama-era rule to limit climate-warming coal pollution, civil servants included analysis showing that by allowing more emissions, the new version of the rule would contribute to 1,400

premature deaths a year. Environmental lawyers plan to use that analysis to challenge the rule when the first court filings are due on April 3.

And this winter, as Trump administration officials worked on a rollback of Obama-era fuel economy standards, political appointees found themselves at odds with their career staff, combing through thousands of pages of analysis to find what Thomas J. Pyle, a Trump campaign adviser in 2016, called “trip wires that E.P.A. staffers were setting” in their work. There is no accusation, however, that any data was false or that E.P.A. employees were engaged in scientific misconduct.

To Trump allies like Mr. Pyle, environmental controls have long been at odds with commerce, and after eight years under President Barack Obama, the imbalance toward regulation was in need of a corrective. Civil servants are supposed to advance the policies of the elected officials that employ them, Mr. Pyle said, and “if you don’t like the person serving, then you should leave.”

But, just days after the 2016 election, Gina McCarthy, the outgoing head of the Environmental Protection Agency, gathered agency employees and implored, “Keep your asses in your seats.”

Steven J. Milloy, a member of Mr. Trump’s E.P.A. transition team, echoed Mr. Pyle. “It’s been obvious since the beginning of the Trump administration that the career staff is sabotaging the rulemakings, deliberately seeding them with numbers that can help the enviros sue.”

The incoming president had campaigned on a promise to dismantle their agency and reverse their highest profile regulations, and Ms. McCarthy, who now heads the Natural Resources Defense Council, said she understood “they would be asked to do things that they may not like.”

But, she told them, with “their understanding of the issues, the science, the law, if they put truth in there, it will matter.”

Civil servants who have served in the federal government for decades said that the efforts by the Trump Administration to roll back environmental regulations were sharply different from those of previous administrations.

“In previous administrations, we did not always agree with the policies, but when we did new rules, we spent years reviewing the data, the science, the economics, as the law says to do,” said Elizabeth Southerland, who joined the E.P.A. during the first George Bush administration and resigned in 2017 from her position as a senior official in the agency’s clean water program. “But what these guys have done is come in and repeal and replace, without relying on data and science and facts.”

Some E.P.A. career employees, speaking on condition of anonymity because of the sensitivity of the matter, said they saw an opportunity last year to bring science to bear as they conducted a legally mandated review of the 2012 regulation of industrial fine soot emissions. Mr. Trump’s political

appointees signaled they did not want to tighten the rule, which would require oil refineries and coal plants to install costly pollution controls or even shut down some operations.

But E.P.A. scientists who reviewed the health data concluded the current rule was still killing people and wanted their warnings made public.

So on Page 181 of a draft 457-page scientific risk assessment, they placed critical data points. The scientists estimated that the current standard, which allows for 12 micrograms of fine soot per cubic meter of air, is “associated with 45,000 deaths” annually. In a separate paragraph, the scientists wrote that if the rule were tightened to nine micrograms per cubic meter, annual deaths would fall by about 27 percent — or 12,150 people a year.

“Those are stunning numbers,” said Patrick Parenteau, a professor of law with the Vermont Law School. “If the Trump administration rejects this and does not change the rule, I don’t know what the legal rationale could be.”

The department’s leaders rejected the staff’s finding. An unpublished draft of the E.P.A.’s upcoming soot rule, viewed by The New York Times, proposes leaving the current standard in place. The E.P.A. administrator, Andrew R. Wheeler, placed “little weight on quantitative estimates” of the mortality risk associated with fine soot pollution, the draft says.

A final version of the report, published in January to preview the still-unpublished rule, does say the rule as it stands contributes to 45,000 deaths annually, but it also says only that tightening it would reduce “health risks,” not deaths.

An E.P.A. spokeswoman, Corry Schiermeyer, said the numbers inserted into the draft report should not be given much weight. “Draft documents of any kind are preliminary by their very nature, with the content subject to change based on internal reviews, scientific peer review, interagency review, and public notice and comment,” she said.

But lawyers say the data in the September draft may have proven useful for environmental lawyers.

“This document represents the best science and scientific judgment that these particles are deadly at the current level, so judges will give great weight to that science,” said John Walke, a lawyer with the Natural Resources Defense Council.

Mr. Walke said that he learned from E.P.A. employees that the scientists had made sure those numbers were published in the document. “People were stunned that this document was even allowed to come out,” he added.

Many federal employees who work on health, science and environmental policy, who spoke anonymously for this story, described using facts in the fight to keep their previous work alive.

Margo Oge, who resigned from the E.P.A. in 2012 after 32 years at the agency, most recently as the head of its office of vehicle emissions policy, said she has advised former colleagues who cannot leave their jobs, “hold your nose and do your best. There may be opportunities where you can impact some of the data that will be used in these rulemakings.”

Such advice guided dozens of scientists, lawyers and engineers who wrote President Barack Obama’s Clean Power Plan to cut planet-warming carbon dioxide emissions from power plants and give a boost to renewable energy. When the same civil servants were directed to undo it and create a more coal-friendly version, some of those who remained at the E.P.A. made sure the documents accompanying the proposed replacement included the fact that increased coal pollution would cause 1,400 new premature deaths a year.

The E.P.A. later deleted the number from the final rule, but Richard Revesz, an expert on environmental law at New York University, said it would still play a role in the legal fight against the rollback. “That number was a devastatingly bad conclusion for the administration,” he said.

A spokesman for the White House Office of Management and Budget, which reviewed the power plant rule, wrote in an email, “This administration relies on career scientific and technical experts to produce analysis of rule-making impacts,” and did so for that rule.

Dan Costa, a former E.P.A. scientist who joined during the Reagan administration and retired in 2018, said of the 1,400-deaths figure, “The career people put in what they could defend and ethically stand behind, and when these rules go to court, the people suing the administration will be able to say, ‘How can you defend the rules when your own documents, your own analysis, don’t back this up?’”

Such efforts have also been made on more routine regulatory efforts. One career federal employee said he had planned to retire soon after the 2016 election, after working for years on an Obama-era rule to reduce water pollution. Then he was directed to rewrite the same rule to allow more releases of the pollutants he had worked to regulate. He decided to stay.

That decision ensured that the technical documents accompanying the weakening of the water rule included scientific data demonstrating that the increased pollution harms human health.

Patrice Simms, a public health lawyer for the environmental group Earthjustice, said he saw similar legal ammunition in E.P.A.’s recent release of draft risk assessments for seven toxic chemicals that could have faced regulation for the first time. Those drafts concluded that health risks from chemicals

such as the dry-cleaning solvent trichloroethylene, or TCE, which is linked to fetal heart damage, and methylene chloride, a paint solvent known to cause asphyxiation, would be mitigated by protective equipment, such as respirators and gloves.

However, in technical documents that accompanied those conclusions, E.P.A. staff members repeatedly noted that it is impossible to assume that workers and other people who come into contact with those chemicals will have or use such protective equipment. The documents include statements such as, “It cannot be assumed that employers have or will implement comprehensive respiratory protection programs for their employees” and “E.P.A. does not know the actual frequency, type, and effectiveness of glove use in specific workplaces.”

“This is what we’ll rely on to build cases,” Mr. Simms said.

The scientists have some legal protection. On climate change, the Global Change Research Act of 1990 legally mandates that 13 federal agencies work together to produce a comprehensive report every four years on the impact of planetary warming on the United States. After the 2018 assessment concluded that climate change could knock as much as 10 percent off U.S. economic production by the century’s end, White House officials decided the law mandating the report made suppressing or altering it too legally risky.

Federal agencies also remain subject to a White House memorandum, written by Mr. Obama’s science adviser, John P. Holdren, that requires scientific integrity policies forbidding the alteration or suppression of research.

Mr. Milloy said such protections were having an impact. “I was hoping Trump would be able to fire these people, but you can’t, legally,” he said. “You can’t discipline them. The most you can do is give them another assignment.”

Mr. Holdren expressed pride in that.

“Your job as a public servant is to uphold the Constitution and support the missions of your department,” he said. “Of course you are required to support the missions of your president — so long as they are consistent with the Constitution.”

*For more climate news sign up for the Climate Fwd: newsletter or follow @NYTClimate on Twitter.*