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EPA gives up on barring grantees from science advisory panels

Agency says it won't challenge ruling that killed controversial policy

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A federal judge ruled earlier this year that Scott Pruitt, the former head of the Environmental Protection Agency, had failed to properly justify policy that barred agency grantees from science advisory panels. AP PHOTO/ANDREW HARNIK

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The U.S. Environmental Protection Agency (EPA) will not fight a judge's February decision to throw out its ban on advisory committee service by agency grant recipients, meaning the heavily litigated 2017 policy is legally dead for now.

In a carefully couched [statement](#) released late yesterday, agency lawyers said they would not appeal the [opinion](#) by U.S. District Judge Denise Cote, which found that EPA had failed to provide a "reasoned explanation" for the ban ([Greenwire](#), 11 February).



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While not ruling out a future attempt to revive the prohibition, EPA would do so only through a supplemental ethics regulation with a signoff from the Office of Government Ethics, the statement said. Three years ago, by contrast, then-Administrator Scott Pruitt imposed the ban with no advance notice or a chance for the public to first weigh in.

Cote, a judge for the Southern District of New York, issued the opinion in a lawsuit brought by the Natural Resources Defense Council (NRDC). Because current EPA chief Andrew Wheeler retains broad discretion to name advisory committee members, the immediate impact of the agency's retreat is likely to be limited at best.

While the return to the pre-2017 status quo is good news, "the reality is that many distinguished scientists were dismissed from EPA's advisory committees because of this unlawful directive," said NRDC attorney Vivian Wang in a prepared statement.

At the Union of Concerned Scientists, which had unsuccessfully challenged the policy in a separate suit, Michael Halpern acknowledged that Wheeler can still pick whom he wants but added that the prohibition had kept well-qualified, independent scientists from even applying for advisory panel positions.

In terms of the reversal's practical effect, Halpern said in an interview, "it forces them to consider the best available experts, which is a good thing."

One of its premier panels, the Science Advisory Board, announced this spring that it would accept nominations for fiscal 2021 appointments, but with a 1 May cut off. In general, however, "candidates will not be disqualified from serving on advisory boards on the ground that they are grant recipients," an EPA spokeswoman confirmed late Thursday in response to a query from E&E News.

In announcing the policy in October 2017, Pruitt had said he wanted to avoid the "appearance of conflict" that would come from officially taking advice from scientists who were also receiving EPA research money. But he never offered concrete evidence that agency funding imperiled their independence or objectivity.

There was also little sign that EPA sought to apply the prohibition even-handedly across all of its 22 federal advisory committees ([Greenwire](#), 21 September 2018).

Instead, Pruitt targeted just three: the Board of Scientific Counselors, SAB and Clean Air Scientific Advisory Committee. Coupled with his decision to end an informal tradition of automatically reappointing first-term panel members to a second term, the ban cleared the way to oust many academic researchers in favor of industry-affiliated members.

The impact was most pronounced on the seven-member Clean Air Scientific Advisory Committee, charged with providing outside expertise during statutorily required reviews of ambient air quality standards for lead, ozone and four other common pollutants. Until 2017, the committee was made up mostly of researchers at colleges and universities.

Now the panel is chaired by a consultant who has done work for the American Petroleum Institute and other industry groups. The bulk of the other members come from state and local regulatory agencies; some have acknowledged that they cumulatively lack the full range of expertise needed to carry out their duties. Last year, a majority of the committee voted to override the conclusions of EPA career staff and recommended leaving national standards for fine particles unchanged. Wheeler, a former lobbyist whose clients included the nation's largest privately owned coal company, has now incorporated that status quo recommendation into a proposal scheduled to be made final by year's end.



At the same time, Wheeler has clashed with the SAB, even though he has appointed or reappointed many of its 44 members. After the SAB challenged the agency's handling of several major deregulatory initiatives, Wheeler this year stripped rank-and-file members of their role in deciding which proposed rules to review and instead concentrated that authority in the chair ([E&E News PM](#), 26 February).

Among those forced off the board as a result of the 2017 policy was Robyn Wilson, an Ohio State University professor of risk analysis who was a plaintiff in another legal challenge cited by EPA in its announcement that it won't appeal ([Greenwire](#), 21 April). In an email this morning, Wilson said she would "definitely" serve again. Because her EPA grant ended in January, Wilson added, "I am not currently affected by the directive regardless."

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***Update, 9 July, 4:50 p.m.:** The story has been updated to include statements from EPA.

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