



Johanns Legislation Presses EPA for Transparency, Responsiveness

“Everyone from mayors to public utility providers to farmers and ranchers have expressed concern with EPA’s aggressive agenda and lack of understanding about how our economy works. It’s not simply what EPA is doing that bothers so many of our nation’s job creators, it’s how EPA is doing it. I’ve heard countless times that EPA is not transparent or responsive, but rather short-sighted and arrogant.”

U.S. Sen. Mike Johanns introduced a package of legislation requiring greater transparency and accountability from the Environmental Protection Agency’s (EPA) regulatory process. The package contains four individual bills.

- **[S. 320: Brings EPA guidance documents under the scope of the Congressional Review Act](#)**
 - Johanns’ legislation would close a loophole that has allowed EPA to use guidance documents to expand the agency’s regulatory reach without being subjected to Congressional oversight.
 - Currently, only rules are subject to the Congressional Review Act. This has allowed EPA to use guidance documents to expand the agency’s regulatory reach without being subjected to Congressional oversight.
 - EPA recently used agency guidance to expand the definition of “waters of the United States” under the Clean Water Act, which should have instead gone through the rulemaking process.
 - Sens. John Barrasso, Dan Coats, Susan Collins, Deb Fischer, Chuck Grassley, Ron Johnson, and Rand Paul are cosponsors of Johanns’ bill.

- **[S. 317: Requires EPA’s Inspector General to report on the agency’s regulatory reporting requirements](#)**
 - This piece of legislation requires EPA’s Inspector General to report to Congress twice a year on the agency’s progress in meeting regulatory reporting requirements in current law.
 - Section 602 of the Regulatory Flexibility Act requires agencies to publish, “during the months of October and April of each year ... a regulatory flexibility agenda which shall contain a brief description of the subject area of any rule which the agency expects to propose.” Similarly, Executive Order 12866 requires EPA to update its regulatory agenda on a similar schedule.
 - EPA totally ignored this requirement in 2012, publishing just one update last year. This update came in December, publishing EPA’s agenda after the election.
 - Johanns’ legislation simply presses EPA to uphold current law by revealing to the American people what the agency plans to pursue.
 - Fischer is also cosponsoring this legislation.

- **[S. 318: Reduces EPA’s budget until the agency meets its legal deadlines for regulatory agenda-setting](#)**
 - This legislation reduces EPA’s budget by \$20,000 each week until the agency meets its legal deadlines for regulatory agenda-setting.
 - This proposal is modeled after a provision in last year’s bipartisan highway bill to encourage federal agencies to complete evaluation of transportation projects in a timely fashion.

- Johanns' legislation adapts this model to encourage EPA to meet deadlines already in law and reinforces the principle that if an agency isn't doing its job, then its budget will be reduced accordingly .
- **S. 319: Promotes transparency and cooperation with state governments**
 - This bill requires EPA to provide timely information and technical assistance to states working to comply with EPA mandates.
 - Section 101 of the Clean Air Act states, "air pollution control at its source is the primary responsibility of States and local governments" and the federal government should, "provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs." Section 101 of the Federal Water Pollution Control Act further supports the role of states in enforcing environmental protections.
 - Current environmental law firmly establishes states as equals to EPA, but recent history suggests EPA has not honored this principle. For example, the D.C. Circuit Court of Appeals noted, when striking down the cross-state air pollution rule, that states have "the initial opportunity to implement reductions required by EPA under the good neighbor provision. But here, when EPA quantified states' good neighbor obligations, it did not allow the states the initial opportunity to implement the required reductions with respect to sources within their borders."

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