



HB137: UNLAWFULLY RESTRICTING THE USE OF COMMUNITY AIR MONITORING DATA IN HOLDING POLLUTERS ACCOUNTABLE

What does HB 137 House Committee Substitute do?

<https://apps.legislature.ky.gov/recorddocuments/bill/25RS/HB137/HCS1.pdf>

House Bill 137, as amended in the House Committee, would require that any enforcement action taken by the Energy and Environment Cabinet or Louisville Metro Air Pollution Control District, for violation of air pollution requirements, be based on a data collection method, emissions test, or monitoring method that has been approved or promulgated by the United States Environmental Protection Agency; or a method or test that produces scientifically defensible and quality assured data that is accepted by the United States Environmental Protection Agency for enforcement purposes. The House Committee Substitute further prohibits consideration of any data collected by a method other than specified, in any enforcement proceeding initiated by the air pollution control board, an air pollution control officer, or a private citizen.

HB 137 appears to prohibit the use or introduction into any enforcement proceeding based on data collected from other types of monitoring devices – mostly notably the lower-cost air quality monitors typically used by community organizations – in enforcement cases, either by state agencies or in citizen suits. This directly conflicts with the Clean Air Act, which allows the use of “any credible evidence” for enforcement purposes. It also conflicts with the procedure rules for administrative agency hearings, which typically allow introduction of evidence that may not meet technical standards for judicial proceedings, but is considered for whatever probative value it might have, such as photographic or video evidence of fugitive dust emissions where such emissions are prohibited.

HB 137’s prohibition on the consideration of such data for enforcement is broad enough that it might also be read to prohibit the state from even considering citizen and community collected data as an indicator of a local problem that warrants further investigation. Community air quality data, which often fills gaps in other monitoring and can identify local pollution hotspots, has significant value and should not be excluded from use in enforcement cases.

While proponents may argue they are simply ensuring only the best data from the most recent test methods are used, this law undermines valid community efforts to understand and address air pollution concerns, and it will deprive the public and agencies of potentially valuable information. Instead, agencies, communities, and air monitoring experts should work together to develop joint strategies to support and improve how community monitoring data can contribute to understanding air quality—and be used to inform strategies to reduce air pollution and protect public health.

What are the legal and practical implications of HB 137?

In practice, the bill precludes the important use of community air pollution monitoring data:

By requiring that only the data collection methods, emissions tests, or monitoring methods approved or accepted by the EPA may be used for enforcement, SB137 may effectively eliminate the use of some lower-cost air quality monitors by community groups as a tool in holding polluters accountable, and requires agencies to ignore the lived experience of community members. Community air monitoring at a more local level (including in residential areas, at schools and playgrounds, and in areas of potential pollution concerns, such as at the fence-line of a local industry) is enabled by lower-cost air sensors that produce valid results, and such monitoring advances the public interest in better understanding local air quality.

It conflicts with the Clean Air Act on what data can be used and considered in enforcement cases:

HB137 also directly conflicts with the Clean Air Act regarding the data and evidence that may be considered in enforcement cases. Section 113 (a) of the CAA allows violations of permits or state implementation plans to be found on the basis of “any information available to the Administrator,” while Section 113(e) allows penalties to be assessed based on “any credible evidence.” EPA’s Credible Evidence Rule (40 C.F.R Section 51.212) also requires that state plans for implementing the Clean Air Act: “must not preclude the use, including the exclusive use, of any credible evidence or information, relevant to whether a source should have been in compliance with applicable requirements[...].” By limiting enforcement authority, Kentucky risks losing the ability to implement the Clean Air Act, meaning EPA could be required to step in and take over.

In fact, when Louisiana proposed a state law last year limiting what evidence could be used in enforcement proceedings, Region 6 of the EPA [sent a letter](#) explaining why the bill was inconsistent with federal law. EPA stated its concerns that the bill may “preclude” the use of any credible evidence to determine compliance under the Clean Air Act and conflict with Louisiana’s federally approved Title V and State Implementation programs. Similarly, HB137 would undermine Kentucky’s obligations

under the Clean Air Act and jeopardize the state's delegated status to administer the Clean Air Act programs locally.

KRC is also concerned about the implications of the bill on other evidence of a violation that may be collected by a local resident, such as videos, photographs, or other documentation. When the state Energy and Environment Cabinet or Louisville Air Pollution Control District takes enforcement action for a violation of Clean Air Laws or regulations, they can use "any credible evidence" to prove there is a violation. When a citizen observes fugitive dust emissions crossing property lines, or takes a sample, that evidence if credible should be considered. Witness testimony is specifically allowed under the Clean Air Act, to establish violations. Yet HB 137 may prohibit the use of such citizen-gathered evidence, ignoring the validity of citizen complaints from neighbors of polluting industry, and violating the obligation of state and local agency obligations to consider and use "any credible evidence" in holding polluters accountable.

The bill is unnecessary as evidentiary standards are already in place:

There are established rules (e.g., [the Daubert standard](#)) for what scientific data can be accepted in a court of law. Any data used in an enforcement proceeding is already subject to evidentiary challenge regarding methods, accuracy, and provenance. Those procedures can be applied to community monitoring data without so strictly limiting what data collection methods and tests may be used in enforcement proceedings.

Maintaining a methodology-neutral data collection and enforcement framework empowers communities and better holds polluters accountable:

Maintaining a methodology-neutral data collection and enforcement framework consistent with the Clean Air Act empowers citizens to contribute air monitoring data to supplement government monitoring and enforcement efforts. It has been shown repeatedly that the ambient air monitoring network has serious gaps, allowing for pollution "hot spots." Community air monitoring is important for filling geographic gaps and highlighting these local pollution hot spots that may justify further investigation by government agencies. It ensures compliance based on more than infrequent inspections and even more infrequent "reference tests" every one to five years (set up and run by the very sources being regulated). This adds deterrence for polluters and promotes accountability.

Citizen monitoring also promotes the use of innovative and non-traditional monitoring technologies and the lived experience of fence-line communities that may exceed the capabilities of EPA-approved test methods, fostering progress in air quality monitoring and enforcement. Community air monitoring is particularly important for underserved and overburdened communities to document and bring attention to environmental justice concerns.