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# Daily Environment Report

## Afternoon Briefing - Your Preview of Today's News

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### Trump Adviser Calls for Downsizing EPA, Overhauling Its Science

*Posted January 27, 2017, 7:57 A.M. ET*

*By Ari Natter and Jennifer A. Dlouhy*

A former adviser to President Donald Trump's Environmental Protection Agency transition team called for shrinking the regulator and overhauling the way it uses science to set policy.

"They've really gotten away with murder in misusing science and justifying regulations on the basis of junk science," Myron Ebell, who left the transition team he led last week, said in an interview in his Washington office.

Ebell, who made clear he was not speaking on behalf of the Trump administration, said he believed most of the goals of the agency created in 1970 had been achieved and the number of employees should be reduced to 5,000 from the roughly 15,000 employed by the agency.

"If the Trump administration is serious about keeping Trump's promises, they will have to reform the use of science," said Ebell, director of the Center for Energy & Environment at the Competitive Enterprise Institute, a public policy organization that advocates limited government.

His remarks come amid mounting concerns that the Trump administration is eliminating scientific data and has restricted the external communication of agency staff.

By revisiting the science that underpins a swath of environmental rules—including those governing ozone and mercury pollution—the EPA can begin to undo them, Ebell said.

#### Public Studies

"The way to clear the air about what the EPA is doing—and what the state of our environment is—is to reform the use of science so they have to use publicly available studies that can be replicated, that can be criticized," he said. "Then we'll find out the condition of the environment was a whole lot better than we've been told."

He singled out a stringent new air pollution standard imposed under President Barack Obama limiting ground-level ozone pollution to 70 parts per billion, down from the Bush-era level of 75 parts per billion. There is no public health distinction between those two levels, but the economic impacts are enormous, according to Ebell.

“I think we need to look at the costs of these regulations and the health benefits of destroying jobs,” he said.

**‘Alternative Facts’**

A former EPA staff member disagreed with his analysis.

“It sounds like Myron Ebell has been reading some alternative facts,” said Liz Purchia, who served as an acting associate administrator in the agency during the Obama administration. “He is going to need to provide a legal and scientific justification for redoing the agency’s work.“

The government is doing more damage to Americans’ health by killing the jobs that pay their bills, Ebell said. Once you look at it that way, he said, the air pollution standard “not only has no health benefit, it has a very large health harm.“

The EPA is swollen with too many people, far beyond what is now necessary to protect public health and the environment, he said. “Most of EPA’s work in terms of protecting the public health and the environment has been accomplished,” but career scientists there and “the special interests that depend upon them” aren’t ready to “declare victory.“

“I’m not an expert in downsizing agencies, but I think the Trump Cabinet has people in it who are good at hostile takeovers. Maybe they should be consulted,” he quipped, noting that billionaire investor Carl Icahn is a special regulatory adviser to the new president.

Trump understands that the EPA “can be a huge obstacle” to economic development, Ebell said.

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## House GOP: No Fast Start for Big Energy, Environment Bills

*Posted January 27, 2017, 12:17 P.M. ET*

*By Rachel Leven*

Congress is unlikely to focus on environment and energy policy in its first 200 days beyond related administration nominations and upcoming Congressional Review Act votes, Rep. Adam Kinzinger (R-Ill.), deputy Republican whip, told reporters Jan. 27 at the end of the joint Republican retreat in Philadelphia.

“Something like an energy bill, just to be honest with you when it comes to timing, is probably something we can push past the first 100, 200 days,” Kinzinger said.

Despite health care and tax reform being front-and-center in Congress, Kinzinger and House Majority Whip Steve Scalise (R-La.) told reporters completing a major energy overhaul is still an eventual priority. Meanwhile, President Donald Trump will act decisively on these issues, Scalise

said, referring to Trump's revival of the Keystone XL pipeline project and his freeze on "radical regulations" that could lead to additional actions.

"Donald Trump has already said we're freezing these radical regulations, and we're going to look at all the things we can do to roll back regulations that were killing jobs," Scalise said in Philadelphia Jan. 27. "American energy was one of the hardest hit industries by those radical regulations."

Kinzinger and Scalise made their comments at the end of the retreat held in Philadelphia from Jan. 25 through Jan. 27. A major priority at the retreat was working on a 200-day plan for the party to execute between Jan. 20 and August, discussions where energy and environment issues were largely out of the limelight.

**What Is on the Agenda**

On energy and environment, the main actions the House expects to execute on are under the Congressional Review Act, Kinzinger said. Those actions are expected to begin next week.

The Wall Street Journal published an editorial by House Majority Leader Kevin McCarthy (R-Calif.) earlier in the week of Jan. 27 laying out Republicans' initial plans to target the Interior Department's stream protection rule (RIN:1029-AC63) and its venting and flaring rule to limit methane emissions from oil and gas operations on federal lands (RIN:1004-AE14) under the review act. However, Rep. Scott Perry (R-Pa.) said this week that his legislation (H.J. Res 22) to nullify the methane regulation is ineligible for a CRA challenge because the House's parliamentary attorneys said too much time has passed since the regulations were finalized in June.

Using the review act eliminates regulations and bars an agency would from finalizing a substantially similar rule in the future. Environmentalists are expected to challenge these actions through rallying opposition among the public, lobbying and, potentially, in federal court.

Additionally, Kinzinger pointed to the slew of environment and energy nominees the Senate has on tap to confirm or will need to confirm once they are nominated as another way the Senate will focus on these issues. None of the energy and environment nominees ranging from Environmental Protection Agency Administrator nominee Oklahoma Attorney General Scott Pruitt to Interior Secretary nominee Rep. Ryan Zinke (R-Mont.) have been confirmed yet.

**Still Hope for An Energy Bill**

Kinzinger and Scalise both expressed hope for an energy bill at some point and disappointment that efforts to execute on it last session weren't completed.

"We were disappointed we didn't get it done last session. We had cut it—significantly pared it down, hoping to get something," Kinzinger said of efforts to pass a sweeping energy bill that fell flat in the final days of the last Congress.

The House and Senate were in negotiations to reach a compromise on the energy bill until the final days of the 114th Congress, at which point Senate Energy and Natural Resources Committee chairman Lisa Murkowski (R-Alaska) blamed the House for the breakdown in talks. Scalise Jan. 27 blamed President Barack Obama, and said with Trump in the Oval Office the odds were much better for a final bill.

Kinzinger added that while an energy bill isn't likely in the near-term, "I think it should be—and it should be something that we do soon."

#### Room for Committee, Other Action

Individual members and a committee chairman at the conference still highlighted energy and environment actions they planned to work on in the near term.

For example, the House Energy and Commerce Committee has plans to focus on security, capacity and resiliency issues related to the electric grid, among other issues, Committee Chairman Greg Walden (R-Ore.) told reporters Jan. 26.

Additionally, Rep. Jason Chaffetz (R-Utah) and Sen. Mike Lee (R-Utah) told Bloomberg BNA Jan. 26 they would push for Antiquities Act reform in Congress. Both members are urging Trump to rescind the national monument designation of the 1.3 million-acre Bears Ears National Monument in Utah among other monuments Obama designated.

"Stay tuned," Chaffetz said.

### Pruitt Prioritizes Sluggish Superfund Program

*Posted January 27, 2017, 03:24 P.M. ET*

*By Sylvia Carignan*

EPA pick Scott Pruitt would take on a Superfund program struggling to clean up toxic sites efficiently without enough state or federal funding, if he's confirmed.

The former head of the Environmental Protection Agency office overseeing Superfund, Mathy Stanislaus, said Superfund appropriations have declined over the past four or five budget cycles, creating a backlog of sites awaiting funding.

The cleanup process has slowed as funding declines.

When all cleanup remedies have been installed on a Superfund site, the EPA deems it "construction complete." According to a 2007 investigation by the Center for Public Integrity, the average yearly number of "construction complete" sites at that time was 42.

In fiscal year 2016, there were 11 "construction complete" sites, the agency said.

#### Pruitt's Priorities

In response to senators' questions about environmental cleanup, Pruitt said multiple times that he would make Superfund "a priority" if he becomes EPA administrator.

"If confirmed, I would expect to prioritize the cleanup of contaminated land," he said in written responses to questions from Sen. Cory Booker (D-N.J.), Sen. Kirsten Gillibrand (D-N.Y.) and Sen. Jeff Merkley (D-Ore.).

Booker met with Pruitt before the Oklahoma attorney general's Jan. 18 U.S. Senate Environment and Public Works Committee hearing.

"Mr. Pruitt said he would advocate for funding for Superfund cleanups in the administration's large

infrastructure package. If Mr. Pruitt is confirmed, Sen. Booker will hold him accountable to this commitment," a spokesperson for Booker's office said in an e-mail.

Booker was concerned about the Passaic River Superfund site in his home city, Newark, N.J. The EPA announced a plan in 2016 to remove 3.5 million cubic yards of sediment from the river, according to Booker.

The senator asked Pruitt to commit to carrying out the EPA's plan for that site efficiently. Pruitt responded that he wasn't familiar with the site, but would seek input from those interested before taking action.

**Stronger State Roles**

Pruitt indicated at the Senate committee hearing that he would be more deferential to state governments if he becomes head of the EPA. That might be bad news for states facing cleanup challenges at Superfund sites, Stanislaus said.

"Superfund takes on the most egregious sites that states need federal assistance on, and the fact is that there's been a decline in state budgets to handle these kind of sites, so you just can't delegate that wholly to states," Stanislaus said.

Neither the states nor the EPA have enough money to assess and clean up sites, so every site is dealt with "sub-optimally," Stanislaus said.

"The ultimate achievement of a cleaned-up site, and the potential economic benefits of a cleaned-up site, are delayed," he said.

While he headed the EPA's Office of Land and Emergency Management from 2009-2017, Stanislaus said states increasingly looked to the EPA for financial help and expertise with National Priorities List sites and immediate risk sites.

"The federal government is a backstop," he said.

**Peter deFur, president of the consulting firm Environmental Stewardship Concepts, said states just aren't equipped to take on more Superfund responsibilities because many do not have their own Superfund laws.**

**"There are no implementing regulations, no expertise, no people who know the program. The state would have to develop all that and then apply to EPA for delegated status, as in air, water and waste permit programs," he said. "States don't have the system to implement Superfund because they don't want it."**

**Running Dry**

**DeFur said he's been watching the declining pace of cleanup as funding decreases.**

**In the late 1990s, funding ran out from a tax on the petroleum and chemical industries. "Orphan" Superfund sites, or those where a responsible party had not been identified to pay for cleanup, were deeply affected.**

**"The orphan sites' pace of cleanup just plummeted," deFur said.**

Work slows down for responsible-party sites when EPA funds and staff time are limited, he said. Less thorough removal options, such as capping buried contamination instead of unearthing it, may be chosen because they are cheaper.

Since the Superfund program's operating resources are drawn from congressional appropriations, the operation of the program also changed, he said.

If Pruitt cuts back on EPA's staffing, leaving an increased workload for remaining employees, deFur said that's bad news for the Superfund program. Myron Ebell, who led Trump's EPA transition team before returning to his job at the Competitive Enterprise Institute, said this week the overall number of EPA employees should be reduced from the current 15,000 to 5,000, though Ebell made clear was not speaking on behalf of the Trump administration.

"It's gonna be a mess," deFur said.

According to a Government Accountability Office report, federal appropriations for Superfund have declined from about $2 billion in 1999.

In fiscal year 2016, Congress provided Superfund nearly $1.1 billion. The agency is under a continuing resolution in fiscal year 2017.

The EPA said the balance of the hazardous substance Superfund trust fund was $188 million as of the end of 2016.

Resignation Threatens to Bring Pipeline Rulings to Halt

*Posted January 27, 2017, 11:00 A.M. ET*

*By Jonathan N. Crawford and Catherine Traywick*

A U.S. energy regulator filed his letter of resignation on Jan. 26. And with that letter, he may have just brought federal decisions on multibillion-dollar natural gas pipelines to a halt.

Norman Bay said he'll leave the Federal Energy Regulatory Commission effective Feb. 3. His announcement followed President Donald Trump's decision to replace him as the agency's chairman with his fellow commissioner, Cheryl LaFleur.

With Bay's departure, the commission will have just two commissioners and will lack the quorum needed to decide on everything from controversial gas pipeline projects to contested utility mergers. His resignation comes just as developers are rushing to build a network of pipelines to accommodate booming gas production from shale reserves in the Northeast, unlocking bottlenecks that have caused prices to plunge.

Among the pipelines waiting for approval are: Energy Transfer Partners LP's Rover project; the PennEast shale line being built by a group of companies including UGI Corp. and Spectra Energy Corp.; and the Atlantic Sunrise system by Williams Partners LP. Spectra Energy's Nexus system and National Fuel Gas Co.'s Northern Access expansion may also be affected.

"Basically, if they don't have a certificate by Feb. 3, they don't get to start construction in the fall," Christi Tezak, managing director of Washington-based industry consultant ClearView Energy Partners, said in a phone interview.

The pipeline developers didn't immediately respond to requests for comment left after

business hours.

Filling Seats

LaFleur, a Democrat and former utility executive, has been on the commission since 2010. The panel has been running with three Democrats since the resignation of Tony Clark, a Republican, last year. The only other commissioner is Colette Honorable. Bay didn't immediately respond to a telephone request for comment left after business hours.

Filling the panel's three vacancies will take time. The U.S. Senate still hasn't confirmed the bulk of Trump's chosen cabinet. Even a speedy confirmation process could take 30 to 60 days, according to David Wochner, a partner at the Washington-based law firm K&L Gates. That may lead to costly delays for companies awaiting their pipeline certificates.

"For those guys, a month matters," said ClearView's Tezak.

One name repeatedly floated as a likely pick by analysts including ClearView to fill the next vacancy is Neil Chatterjee, senior energy adviser to Senate Majority Leader Mitch McConnell and a former lobbyist for National Rural Electric Cooperative Association. His relationships on Capitol Hill may expedite the confirmation process—but not significantly.

First Priority

"If President Trump and Senator McConnell tomorrow were to meet and say this is high priority, I still would expect it's going to be in the 60-day time frame," Wochner said. "The Senate will be occupied with more significant votes. The cabinet will be first priority."

Chatterjee didn't immediately respond to requests for comment.

Industry groups are already putting pressure on the administration to act quickly.

"Given President Trump's focus on infrastructure and domestic energy resources, we urge him to nominate candidates to fill the commission's three existing vacancies as soon as possible," Don Santa, president and chief executive officer of Washington trade group Interstate Natural Gas Association of America, said in a statement.

—With assistance from Ari Natter and Ryan Collins.

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EPA 'Punted' in Michigan Environmental Justice Case: Attorney

*Posted January 27, 2017, 01:35 P.M. ET*

*By Stephen Joyce*

Environmental justice advocates are welcoming the EPA's first-ever finding of discrimination in its ruling that a Michigan agency unfairly treated African Americans in Flint, Mich. But an environmental attorney involved in the case is disappointed the EPA is holding off on penalizing the state.

For the first time, the Environmental Protection Agency issued a finding of discrimination in a Title VI of the Civil Rights Act of 1964 investigation, involving Michigan DEQ's 1992 permitting of Flint's Genesee Power Station. In a 2011 case, EPA made a preliminary finding of discrimination (Angelita C. et al. v. California Department of Pesticide Regulations).

The EPA could begin the process of withholding funds from the Michigan agency as a result of the finding, as federal agencies such as the Education and Transportation departments have done. But in its letter notifying the state agency of its finding of discrimination, EPA said it will reserve its right to act and instead observe how the state agency handles a second civil-rights violation case, also involving Flint and stemming from its more recent drinking-water crisis, from March 2016.

The agency's letter Jan. 19 was one of the outgoing Obama administration's final actions on civil rights. A Michigan DEQ official strongly disputed the EPA's allegations.

"I think [EPA officials] punted. We applaud the fact EPA finally recognized the discrimination, which in this case would be hard to ignore, but they kicked the can down the road instead of taking decisive action," Yale Law School professor Marianne Engelman Lado told Bloomberg BNA.

### Racial Discrimination Cited

The EPA issued its Jan. 19 letter to the Rev. Phil Schmitter, a Roman Catholic priest. Schmitter alleged in a 1992 complaint two predecessor agencies to the MDEQ racially discriminated against residents of predominantly black Flint during a public-hearing process contemplating the issuance of a permit for the Genesee Power Station, a power plant burning wood waste, natural gas, animal bedding and tire-derived fuel.

During the facility's permitting process in the 1990s, African Americans were treated less favorably than whites, the report concluded. Permit hearings and their locations were more convenient for residents of predominantly white neighborhoods compared to black ones, and uniformed and armed guards monitored the one public hearing held in Flint but not two other hearings held in neighborhoods where fewer blacks lived, the report said. At one point, a hearing was abruptly adjourned as a black commenter was speaking, the letter said.

The state agency had still not met its full obligations under the law as of Jan. 12, 2017, the letter said. "EPA is deeply concerned that MDEQ will not fulfill its responsibility to implement a fully functioning and meaningful non-discrimination program as required under EPA regulations," the letter said.

The March 2016 complaint was filed by a Flint resident who said residents were "singled out (segregated)" when the city switched its water source to the Flint River in 2014.

That the EPA is waiting to see how the state agency handles last year's complaint, and didn't take immediate action against DEQ, was "disappointing," in part because it did not compel MDEQ accountability for its alleged violative behavior, Lado said.

"It would have sent a stronger message to start the process of withholding federal funds," she said.

### 'Gross Misstatements'

But MDEQ spokesman Michael Shore told Bloomberg BNA that the EPA's letter contains "gross misstatements of fact." Officials with the new Trump administration EPA did not immediately respond to Bloomberg BNA's requests for comment.

"Claims [of racial discrimination] made in this letter were previously adjudicated and rejected at both the state and federal level, which raises questions about the letter itself," Shore said.

**"Those claims were rejected by EPA's environmental appeals board in 1992 and two state of Michigan courts."**

**"The letter claims a failure for more than 30 years to provide foundational nondiscriminatory programs required by nondiscrimination regulations. Well, we work with EPA every day, so if it's true that we were out of compliance, it's also true that for 30 years, EPA never told us we were out of compliance," Shore said.**

**He said the facility has caused no environmental harm "and we continue to tackle environmental issues every day, in a collaborative way" with the EPA. Further, the MDEQ constantly seeks to be more inclusive in its policy-making, Shore said.**

**"The notion that we haven't improved our public comment and public hearing processes since 1992 is just patently absurd," he said.**

**EPA listed recommendations to help the MDEQ enhance compliance with its civil-rights obligations, including:**

- **improving development of a non-discrimination program allowing people with disabilities and limited English skills to participate;**
- **ensuring the agency has processes for addressing environmental complaints;**
- **taking steps to enhance public participation in public-comment stages of rulemaking; and**
- **constructing an effective environmental justice complaint system.**

**New Mexico, North Carolina Cases**

**In a second Jan. 19 letter, EPA said it resolved a 2005 complaint with the New Mexico Environment Department which alleged discrimination based on race and national origin in violation of Title VI related to the state agency's issuance of a treatment, storage and disposal permit to Roswell, N.M.-based Gandy-Marly Inc. in 2002.**

**The New Mexico Environment Department agreed to enter into an Informal Resolution Agreement to resolve the complaint. As part of that agreement, the state agency agreed to ensure its non-discrimination procedural safeguards comply with Title VI obligations, improve its grievance procedures for complaints, designate a non-discrimination coordinator and implement a nine-point public participation regime.**

**EPA investigated whether the New Mexico agency performed required scientific investigations into possible disparate impacts, ensured that limited-English proficient residents were provided a meaningful opportunity for effective public participation and whether the agency had a statewide pattern and practice of similar discriminatory permitting and lack of access for limited-English proficient residents to the permitting process.**

**And a Jan. 12 "letter of concern" from EPA to the North Carolina Department of Environmental Quality into alleged discriminatory impacts from the state agency's regulation of swine feeding operations said EPA "has deep concern about the possibility that African American, Latinos, and Native Americans have been subjected to discrimination as the result of NC DEQ's operation of the Swine Waste General Permit program," the letter said.**

**The EPA suggested the state agency conduct an assessment of current permitting processes to determine what changes should be made to mitigate adverse impact to nearby**

residents including covering waste lagoons, not spraying in the evenings and on weekend and assess current mitigation technologies that would satisfy the department's performance criteria for new or expanding industrial swine operations.

Title VI of the Civil Rights Act of 1964 (Pub. L. No. 88-352) bars entities receiving federal funds from actions that are discriminatory or would have a discriminatory impact based on race, color or national origin. EPA's Office of Civil Rights enforces the Civil Rights Act that prohibit discrimination by recipients of EPA funds and provides policy guidance to EPA program offices on civil rights compliance and equal employment opportunity.

EPA's investigation into the North Carolina agency's actions is likely to be completed soon, said Lado, a former senior staff attorney at Earthjustice who was involved with the case before her move to Yale Law. EPA officials have said they intend to work with new North Carolina Gov. Roy Cooper's (D) administration on the matter.

Vindication

Schmitter told Bloomberg BNA he was pleased and felt "vindicated" by the outcome. But he said he regretted three others who helped launch the complaint aren't around to share in the complaint's success.

"I was one of the younger people and I'm still alive, but they're all dead. They would have liked to have seen this day," he said.

The statute gives EPA five days to acknowledge receipt of a complaint, 20 more days to decide whether to accept the complaint for investigation and 180 additional days to make preliminary findings and recommendations, if any. The Flint case took 9,160 days.

Lado, too, said she was pleased with the outcome. "[I]n these three letters, communities that have struggled to get recognition they have civil rights concerns had those concerns recognized. And the federal government sent a clear message to states and others that civil rights should be enforced."

Pruitt Colleagues Say He Will Bring Collaboration, Efficiency to EPA

*Posted January 27, 2017, 12:00 P.M. ET*

*By Brian Dabbs*

A mission-driven public servant with tunnel vision on upholding the laws on the books.

That's the ethos of the likely next Environmental Protection Agency administrator, Oklahoma Attorney General Scott Pruitt, according to a range of public and tribal officials who have worked under and alongside him over recent years.

In testimony to Senate lawmakers, Pruitt has continued to hammer home that point.

"I will work to achieve the objectives of EPA-administered laws consistent with the process and framework established by Congress," Pruitt said in answers to more than 1,000 questions from Senate Democrats that were posted publicly Jan. 25. "I would expect EPA to operate in an open and transparent manner, consider the views of stakeholders as appropriate, act based on sound science, and follow the laws."

Divisive Nomination

Pruitt, however, is a lightning rod, and the applause is far from shared by all. He's prized by Republicans and critics of EPA overreach, but scorned by environmentalists. The nominee is still involved in several active lawsuits against the EPA, including challenges to the Clean Water Rule, Clean Power Plan, ozone air quality standards, mercury standards and methane limits for the oil and natural gas industry.

He also says he will seek authorization from EPA ethics officials to participate in that ongoing litigation as agency chief.

But despite the opposition swirling around Pruitt, those public and tribal officials say the nominee has a gift for convening diverse sets of stakeholders and then executing resolutions to complex problems. That's likely to translate to an EPA headquarters that is far more receptive to state and local community concerns, Alabama Attorney General Luther Strange, and Oklahoma public and tribal officials told Bloomberg BNA in interviews.

### Phosphorous Upshot

Pruitt has touted his role in an accord to study and ultimately decrease phosphorus pollution in the Illinois River watershed as an example of the collaboration he'll bring to EPA headquarters.

That accord, struck between Oklahoma and Arkansas in 2013, staved off years of potential litigation and encouraged Arkansas, the upriver state in the watershed, to implement a 0.035 milligrams per liter phosphorous limit, J.D. Strong, director of the Oklahoma Department of Wildlife Conservation and a recent head of the Oklahoma Water Resources Board, told Bloomberg BNA.

"Rather than twiddle our thumbs and not do anything, Scott Pruitt said 'lets reach across the table' and ultimately get the buy in that was needed to reduce phosphorous," said Strong, who referred to phosphorous contamination as a decades-long dispute among states.

Strange also stressed that Pruitt routinely aims to bring together a range of stakeholders in order to solve a problem.

Environmental groups and Democratic lawmakers have criticized the pact as a delay tactic that merely yielded a study on the contamination. Sen. Cory Booker (D-N.J.) pressed that narrative in Pruitt's nomination hearing Jan. 18. Sen. John Boozman (R-Ark.), however, said the pact and study created stricter Arkansas controls.

The two states published a final report on the pact in recent weeks.

Dustin McDaniel, the Democratic attorney general of Arkansas at the time of the 2013 accord, praised Pruitt's role in the pact in a mid-January letter to senators, arguing the agreement also strengthened Oklahoma's controls. "The resulting agreement reflects that Oklahoma enhanced, not relaxed, its enforcement of environmental protection," McDaniel said. "Scientists were appointed to establish the proper water quality metrics, and at no time were the phosphorous abatement measures relaxed."

### Tribal Rights Agreement

Pruitt, as the state's attorney, also helped broker a deal in August to settle water rights for the Chickasaw and Choctaw Nations, and tribal officials close to those negotiations praised Pruitt's outreach to their communities.

The legal accord settled regulatory authority for waters in territories based on past treaties for a a wide swath of southern Oklahoma. Following the announcement of a deal, the tribes said the pact would put in place lake-release restrictions to control Oklahoma City's water supply while ensuring water resources are available for wildlife and outdoor uses, such as fishing.

Michael Burrage, a member of the Choctaw Nation and lead counsel for both nations in the settlement process, told Bloomberg BNA Pruitt demonstrated a drive to serve all Oklahomans.

"We were able to get through some complex issues in really record time," Burrage said. "We got it done in five years, and usually a case like this takes 20 years. He was willing to work and listen, and where compromise was needed, everybody compromised some."

Bill Lance, secretary of commerce for the Chickasaw Nation, echoed that assessment.

"Scott Pruitt has a proud record as a solid advocate for the rights of all Oklahomans as attorney general," Lance told Bloomberg BNA in a statement. Departed Interior Secretary Sally Jewell praised the tribal pact earlier in January as the first such agreement in Oklahoma.

Rule-of-Law Stickler

Pruitt continues to describe the EPA as a critical body with rightful jurisdiction over cross-state and other areas of environmental regulation, arguing his litigation has in the past focused on challenging EPA violations of rulemaking protocol.

In response to a question posed by Sen. Tom Carper (D-Del.), the Senate Environment and Public Works Committee ranking member, Pruitt again said the EPA's failure to conduct cost-benefit analysis prompted his legal challenge against the EPA's Mercury and Air Toxics Standards. The suit argued the "EPA acted contrary to law and arbitrarily and capriciously by not considering the costs of regulation in determining whether it was necessary and appropriate to regulate mercury from fossil fuel power plants," Pruitt said in his written response to Democrats.

The agency issued the power plant standards in 2011, and the regulations are still in place even though the U.S. Supreme Court ruled in 2015 that the EPA made a mistake by failing to consider cost in its decision that it is "appropriate and necessary" to regulate power plant emissions (Michigan v. EPA, 135 S. Ct. 2699, 2015 BL 207163, 80 ERC 1577 (2015))

Strange, the Alabama attorney general who has joined Pruitt in a range of litigation against the EPA, said critics have unfairly painted the nominee as a regulatory opponent. Pruitt has made waves in the confirmation hearing by declaring his opinion on the human connection to climate change "immaterial," but Strange said that's the proper strategy for the likely soon-to-be administrator.

"It's perfectly consistent with his record as attorney general and our work together to focus on enforcing the law and not making those kinds of decisions himself. So I think he will absolutely ensure the agency follows the law," Strange told Bloomberg BNA. The two co-authored a controversial opinion article on climate change in mid-2016, which emphasized the value of free debate.

Pruitt says be believes the EPA should regulate carbon dioxide and other greenhouse gases.

‘Missional’

That evaluation is shared by Tim Downing, a newly elected Oklahoma state representative who served under Pruitt at the attorney general’s office for roughly five years.

“He’s a very strong leader. He’s missional, and I think you see in him a man who identifies what the mission is and then executes it. He did that as attorney general and he’ll do that at the EPA,” Downing told Bloomberg BNA. “You also see him as a man that believes the government has to function within the rule of law.”

That argument hasn’t generated support among Senate Democrats or environmental groups, however. One political appointee at the EPA under former President Barack Obama said EPA employees are reading that pledge in different ways.

“A couple of people have said they felt more comfortable after hearing that, but the question is the difference between uphold and enforce,” the political appointee, who asked not to be identified, told Bloomberg BNA. “He may be saying he’s not going to violate the law, but if he doesn’t enforce it, what’s the difference. I’m getting a mixed bag, and it’s pretty speculative.

Career employee Larry Starfield is temporarily heading the EPA Office of Enforcement and Compliance Assurance as President Donald Trump fills out the agency.

Democratic Clamor Insufficient

The Environment and Public Works Committee hasn’t yet scheduled a committee vote on Pruitt, but Republicans will soon move the nomination to the Senate floor. No Republicans have voiced opposition to Pruitt, indicating the chamber will ultimately confirm him.

Still, Democrats lashed out against Pruitt’s responses late Jan. 25 and Jan. 26.

“Mr. Pruitt’s responses were shockingly devoid of substance, did not rely on empirical evidence and did not reflect the thorough effort that a task so important to our democracy demands,” Carper said in a statement. “I strongly urge Mr. Pruitt to revisit these questions and provide us with the comprehensive information we need.”

A group of environmentalists, including Oklahoma lawyers, testified before Carper and other committee Democrats Jan. 24 on Pruitt’s allegedly poor environmental history.

Sen. Sheldon Whitehouse (D-R.I.), a fierce Pruitt critic who has decried him as a fossil fuel industry shill, said the answers bode poorly for the future of EPA collaboration with Congress.

“If Mr. Pruitt is willing to sidestep the senators performing their role of providing advice and consent on his nomination, I can hardly imagine how contemptuous he will be when Congress asks for information about changes he makes to the Renewable Fuel Standard, clean air and water protections or toxics regulations,” Whitehouse said in a statement.

Republican counterparts, however, have taken a diametrically opposed position, stressing the nominee’s rule of law priority.

“Attorney General Pruitt has stood out as a champion of state and individual rights and has fought against federal overreach,” Sen. Jim Inhofe (R-Okla.), who taxied Pruitt on the attorney general campaign trail in his private airplane, told the confirmation hearing. “Pruitt will ensure that the agency fulfills the role delegated to it by the laws passed by

Congress—nothing more, nothing less."

## After $2.6 Billion Writedown, 'Clean-Coal' Plant Set to Open

*Posted January 27, 2017, 8:36 A.M. ET*

*By Mark Chediak*

Southern Co.'s "clean-coal" plant has been hailed as a first-of-its-kind project. President Donald Trump's climate-change skepticism could make it the last.

The facility in Kemper County, Mississippi, is slated to finally start generating electricity and capturing carbon dioxide from coal by Jan. 31. The plant has been plagued by construction challenges, running more than two years behind schedule with a $7 billion price tag that's more than double its original $2.88 billion budget. Southern has had to write down about $2.6 billion before taxes for Kemper, and faces lawsuits it said are baseless.

Now the challenge is a new administration that supports coal but promises to roll back environmental and energy regulations.

"There's nothing wrong with the technology except the price tag," said Howard Herzog, a senior research engineer who tracks carbon-capture projects at the Massachusetts Institute of Technology. "What will make carbon capture and storage move forward is when climate rules get tough, and there's no sense from this incoming administration that they're going to get tough with climate policy."

### 'Big Bet'

The Kemper project was conceived during a different energy age in the U.S., when natural gas prices were rising and the fuel was thought to be becoming scarce. "Nobody could have predicted when this plant was first ordered" that fracking would lead to plentiful gas supplies and low prices, Southern Chief Executive Officer Tom Fanning said in an interview.

Kemper's challenges stem from making a "big bet" on a new technology, Fanning said. In 2010, when Mississippi regulators approved the project, only about 10 percent of the engineering had been completed, leaving "some bandwidths of uncertainty," Fanning said.

According to Southern, the project has created about 1,300 direct and indirect jobs and is expected to produce $44.7 million annually in state and local taxes through the first 10 years of operation.

The coal industry has been counting on plants like Kemper to pave the way toward cleaner-burning technologies. But utilities have been closing coal plants and replacing them with cheaper, lower-emitting natural gas. Wind and solar power also have dropped in price.

"Power-generation technology is bypassing coal," said Mark Brownstein, vice president of the climate and energy program at the Environmental Defense Fund.

Trump, however, has been a supporter of coal. "We'll unleash the full power of American energy, ending the job-killing restrictions on shale oil, natural gas and clean, beautiful coal," he said Jan. 26 "And we're going to put our coal miners back to work."

The 582-megawatt Kemper facility, in the east central part of Mississippi, is expected to supply enough power for 200,000 homes. It's backed by $382 million in grants from the U.S.

Energy Department, according to Southern, and designed to turn low-grade coal into gas to generate electricity while also capturing carbon dioxide and pumping it underground to aid oil recovery.

The plant feeds coal into a device called a gasifier, which converts the fossil fuel into a synthetic gas through a chemical reaction and strips out carbon dioxide that can be sent, by pipeline, to nearby oil fields.

"We see carbon capture as one of the critical-path technologies to get to a low carbon world," said Kurt Waltzer, managing director for the Clean Air Task Force, an environmental group.

Trump has offered contradictory opinions on how to deal with coal-plant emissions. He's vowed to kill the Obama administration's Clean Power Plan, which calls for sharp cuts in greenhouse gases from power plants, providing a justification for projects like Kemper. At the same time, his administration said it's committed to clean-coal technology and reviving America's coal industry, according to the White House website.

Elsewhere, support remains for carbon capture, which some environmentalists said curbs the worst effects of climate change. On Jan. 10, U.S. power generator NRG Energy Inc. and Japanese energy producer JX Nippon Oil & Gas Exploration Corp. finished, on time and on budget, a $1 billion carbon-capture coal plant southwest of Houston. The carbon produced by the facility pumps oil and gas out of the ground, which helps cover its cost.

Bipartisan proposals to extend tax breaks for carbon-capture facilities such as Kemper have been introduced in Congress. They could provide additional revenue of as much as $4.5 billion to Southern, according to a study by Taxpayers for Common Sense and Friends of the Earth.

But Trump's antipathy toward the Clean Power Plan would make the financial justification for clean coal an even tougher sell, said Christine Tezak, a managing director at Washington-based ClearView Energy Partners.

"The economics are incredibly disadvantageous," Tezak said.

### Beyond Border

Fanning said he sees a "tremendous need" for carbon capture to reduce emissions across the globe, with coal expected to remain the backbone of electricity production in developing countries such as India and China. Atlanta-based Southern has struck clean-coal development agreements in South Korea and China.

"This technology will have ramifications far beyond the border of the U.S.," Fanning said.

Yet the Kemper facility remains a point of legal contention. An oil producer, Treetop Midstream Services LLC, is suing for $100 million because of a canceled carbon dioxide supply contract. Customers including a Mississippi casino owner also sued, alleging Southern failed to fully disclose facts related to the plant's cost. An institutional investor filed suit Jan. 23 against Southern, accusing the company of giving false information about the project. Southern said the legal challenges have no merit.

### Operating Costs

Southern recently told state regulators that the five-year operating and maintenance costs of

**the facility have nearly quadrupled to about $1 billion from the original estimate, according to a regulatory filing.**

**Mississippi regulators will have to decide how much of Kemper's remaining cost can be passed on to the utility's 186,600 customers. Per capita income in the state is the lowest in the U.S.**

**Regulators originally capped the amount ratepayers could be billed for Kemper's construction at $2.88 billion, but another $1.4 billion could be passed along to customers to pay for financing, pipelines and a nearby coal mine related to the facility.**

**"It's the gift that keeps on taking," said Paul Patterson, an analyst for Glenrock Associates LLC, a New York-based research firm.**

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**TransCanada Energy East Project Decisions Voided by Regulator**

***Posted January 27, 2017, 02:05 P.M. ET***

***By Robert Tuttle***

**Canada's lead pipeline regulator has voided past decisions on TransCanada Corp.'s application for its proposed Energy East pipeline, forcing the company to start the hearing process from the beginning shortly after competing pipeline projects have been approved.**

**The National Energy Board's decision was made by a new hearing panel that was appointed earlier this month. That panel replaced an earlier panel that stepped down lastSeptember amid accusations of bias. Past decisions regarding the proposed Eastern Mainline gas pipeline project were also voided. While TransCanada won't have to submit new applications, once the panel determines that the existing applications are complete, a 21-month time limit for hearings will reset.**

**The decision is a setback for the $15.7 billion ($11.2 billion) Energy East project. The project involves building a 4,500 kilometer crude pipeline from the oil fields of Alberta to refineries in Eastern Canada and a marine terminal in New Brunswick. It comes as viability of the line has been thrown into doubt after U.S. President Donald Trump signed orders to revive the company's proposed Keystone XL pipeline and after Canada's government approved two other major export pipelines late last year.**

**"I don't think TransCanada is really hopeful that the project will be approved down the road," Steve Belisle, a fund manager at Manulife Asset Management in Montreal, said in a phone interview. "I don't think this is key to them going forward."**

**TransCanada applied to build Energy East three years ago as Canadian oil producers looked to expand access to markets beyond the U.S., where nearly all of Canada's oil is sold and where a surge of shale oil production depressed prices. The aim was to open access for Western Canadian oil producers to the Atlantic Ocean, to allow for the export Alberta's crude to Europe. The project was initiated at a time when the Keystone XL project was stalled by former U.S. President Barack Obama, who later rejected the proposal.**

**The company said it will review the National Energy Board's decision to "understand its impact on TransCanada and the project," Spokesman Tim Duboyce said in an e-mailed statement. "Energy East remains of critical strategic importance because it will end the need**

for refineries in Quebec and New Brunswick to import hundreds of thousands of barrels of foreign oil every day, while improving overseas market access for Canadian oil."

TransCanada submitted a new application on Thursday for Keystone XL pipeline at the invitation of President Trump. Last November, Canada's government approved Kinder Morgan Inc.'s Trans Mountain pipeline expansion to the Pacific coast and the replacement of Enbridge Inc.'s Line 3 to the U.S. Midwest. The three lines would will add about 1.8 million barrels a day of oil export capacity, enough to handle Canada's oil production for 20 years, according to National Energy Board projections.

The pipelines may be more than the industry needs, according to Wood Mackenzie.

"At best we would expect TransCanada to build Keystone XL or Energy East but not both," analyst Afolabi Ogunnaike wrote in a note Jan. 24.

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Cancer Case Against Exxon, Shell Stays in Federal Court

*Posted January 27, 2017, 03:11 P.M. ET*

*By Steven M. Sellers*

A federal toxic exposure case against Exxon Mobil and Shell will stay put after the plaintiff established no valid basis to send it back to state courts, the U.S. District Court for the Eastern District of Lousiana ruled Jan. 25 (Thomas v. Exxon Mobil Corp., 2017 BL 23478, E.D. La., No. 16-cv-15750, 1/25/17).

Travis Thomas, who suffers from leukemia, didn't state a sufficient claim against a Louisiana-based gas station in his effort to defeat federal diversity jurisdiction over his cancer claims, the court said. The ruling denied Thomas's motion to send the case back to Louisiana state courts, where it was originally filed.

Diversity jurisdiction requires a showing that the citizenship of each plaintiff is diverse from every defendant in the case.

Thomas originally sued Exxon Mobil Corp. and Shell Oil Co. in state court, but the companies moved the case to the Eastern District of Louisiana under its diversity jurisdiction. They argued the addition of the gas station, Jafri's Faith Inc., as a defendant was an improper attempt to defeat federal jurisdiction.

The court agreed, and denied Thomas's motion to send the case back to state court.

The complaint made no specific factual allegation that Jafri's knew about the health hazards of benzene in the gasoline it sold, the court said.

U.S. District Judge Jane Triche Milazzo wrote the opinion.

The law offices of Stephen J. Austin, as well as the Williams Law Office represented Thomas and other plaintiffs in the case.

Kuchler Polk Schell Weiner & Richeson represented Exxon Mobil and Shell.

U.S. Gas May Be One Trade That Survives Trump's Mexico Clash

*Posted January 27, 2017, 01:57 P.M. ET*

*By Naureen S. Malik*

**It could take more than a political standoff between President Donald Trump and Mexico to keep U.S. shale gas from flowing south.**

**While Mexico works to reverse declining oil and gas production, the nation's burning record amounts of natural gas pulled from tight-rock formations north of the border. Pipeline deliveries of the fuel from the U.S. have more than doubled in the past two years, and Mexico's now tied with Chile as the biggest buyer of tanker shipments of U.S. liquefied natural gas leaving Louisiana's coast.**

**The gas exports stand in sharp contrast to the showdown threatening one of the world's biggest bilateral trading relationships. Mexico's President Enrique Pena Nieto canceled a meeting with Trump Thursday after the U.S. leader blasted him on Twitter for refusing to pay for a wall along the countries' border -- and now Trump's considering a 20 percent tax on Mexico imports to pay for it. Gas exports, seen as supporting jobs in the U.S. while handing Mexico cheap fuel, could end up being one trade that bucks the political maelstrom, according to ING Groep NV and Pira Energy Group.**

**"This all boils down to exactly how protectionist Trump decides to be," Rob Carnell, chief international economist at ING in London, said by e-mail this week. "My guess is this will be targeted, not blanket, and any retaliation is then down to Mexico, and I imagine they would rather have the gas at a decent price than deter it by putting up tariffs."**

**Gas piped to Mexico climbed to a record in 2016, averaging more than 4 billion cubic feet a day in August through October, U.S. government data show. That supply, equal to roughly a fifth of Texas's total gas output, displaced LNG cargoes from Peru, according to Madeline Jowdy, senior director of global gas and LNG at Pira in New York. Exports climbed even higher after Petroleos Mexicanos's Los Ramones Phase II pipeline began operations in May.**

**Trump himself owned as much as $1 million worth of shares in a U.S. pipeline giant, Energy Transfer Partners LP, that's helping build a line that'll move more gas to Mexico, according to his federal candidate disclosures in 2015. He still had as much as $50,000 worth of shares in the Dallas-based company as recently as May, according to his most recent disclosure. Energy Transfer won approval from the Federal Energy Regulatory Commission Friday to begin operations at the San Elizario Crossing in Texas which will ship gas to Mexico.**

**While the State Department issues presidential permits for projects crossing U.S. borders, the commission has jurisdiction over gas pipeline crossings.**

**LNG imports to Mexico's Manzanillo terminal from the U.S. have also jumped. Ten tankers have unloaded super-chilled gas at the facility on Mexico's western coast since the beginning of August, according to ship tracking data compiled by Bloomberg. U.S. gas delivered to Manzanillo has gone for as much as $5.53 per million British thermal units, including transportation costs, based on data in a U.S. Energy Department report.**

**Mexico's increasing reliance on U.S. natural gas isn't without risk, according to Bank of America. Protectionist moves by the Trump administration could curtail exports of the fuel, Francisco Blanch, head of commodity markets research for the bank in New York, said by e-mail Jan. 25.**

**The impact may hinge on Mexico's response to Trump considering a 20 percent tax on**

imports from the country—to pay for the wall along the southern U.S. border that Trump pledged to build during his presidential campaign. White House Press Secretary Sean Spicer said Jan. 26, "By doing that, we can do $10 billion a year and easily pay for the wall just through that mechanism alone."

The gas shipments have helped U.S. energy drillers eliminate a supply glut that had sent prices of the fuel plunging to the lowest level in almost two decades. But in one twist of irony, the exports have also cut costs for Mexico's manufacturers, helping them compete against American plants.

Policy changes such as renegotiating the North American Free Trade Agreement and constructing a border wall "risk hurting export demand for U.S. natural gas," Blanch said. "We remain concerned about large-scale disruptions" to trade.

ING head of commodities strategy Hamza Khan said by e-mail Jan. 25 that gas could keep moving to Mexico through underground pipelines even if Trump succeeds in building a wall along the almost 2,000-mile (3,200-kilometer) border.

"From the political side anything's possible," he said, "but as a commodity analyst, I don't see why either party would want or benefit from reduced flows."

—With assistance from Kevin Varley, Amy Stillman, Lauren Etter, Andrea Navarro, Justin Sink and Jonathan N. Crawford.

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Republicans Target Utah Monument, Watching Antiquities Act Changes

*Posted January 27, 2017, 01:02 P.M. ET*

*By Rachel Leven*

Congressional Republicans want President Donald Trump to roll back federal protections for a new Utah monument as they watch broader limits on presidents' ability to designate new monuments.

The Bears Ears National Monument in Utah, designated by President Barack Obama in December, could prove a test case, but environmental advocates are already gearing up their opposition arguing such a move would be unprecedented and likely illegal under the American Antiquities Act of 1906.

"We invested in getting these monuments created and we're going to fight to keep them and that includes going to court to fight for them," Sharon Buccino, director of the Natural Resources Defense Council's Land and Wildlife Program, told Bloomberg BNA Jan. 26 regarding the battle to protect monuments under the Antiquities Act of 1906.

Buccino added on possible legislative actions: "We're going to fight it every step of the way."

National monument designations strike at a key environment debate in Congress—the balance between economic development and environmental protection—because these proclamations often bar new mineral leases or other energy-related activities. Like the several other battles brewing between environmentalists, the administration and Congress this session, it also highlights the differing views of appropriate states' rights and the federal

government's role.

Sen. Mike Lee (R-Utah) told Bloomberg BNA Jan. 26 he expects the actions on monuments and the Antiquities Act to occur within the year. The White House didn't respond to Bloomberg BNA's message requesting comment.

### The Agenda

The Antiquities Act gives the president and Congress the authority to designate federally owned or controlled lands that have historic or scientifically significant objects of interest as national monuments. Both Democrats and Republicans have designated national monuments under the act. No president has ever rescinded entirely a monument designation, according to the Congressional Research Service.

Now, Lee and Rep. Jason Chaffetz (R-Utah) are calling for the president to change that this year and to revoke the monument-status of the Bears Ears National Monument, a 1.3 million-acre Utah monument designated by Obama in December. Chaffetz told reporters Jan. 25 he has already spoken to administration officials such as Vice President Mike Pence (R) and White House Chief of Staff Reince Priebus about the issue. He's also had a conversation with Interior secretary nominee Ryan Zinke.

They are also gunning for Antiquities Act overhauls and are considering policies to either limit or eliminate the law entirely. The overhaul route could include limiting the duration of designations to two to three years or giving states and Congress the right to approve or disapprove those designations before they take effect, Lee said.

Among the related policy proposals already in play this session is a bill (S. 33) introduced by Senate Energy and Natural Resources Committee Chairwoman Lisa Murkowski (R-Alaska) that, in part, would place limits on how and where a national monument can be designated.

Eliminating the law could also be the right choice, Lee said, because there are other laws such as the Archaeological Resources Protection Act that provide similar protections.

"It might have made sense 110 years ago to give the president of the United States the authority provided by the Antiquities Act," Lee said. "But given the way the act has been used in recent years and other tools at our disposal to protect archaeological resources and other interests covered by the antiquities, I don't think it's necessary or prudent to continue to give the president such broad or unlimited authority."

### The Hitch

But environmentalists may have other plans. Buccino, for example, said her group would fight these overhauls and actions that come from the White House and Congress. And they have an argument, she said.

For example, while Chaffetz and Lee say Trump has the authority—and should use it—to rescind the Bears Ears monument and others through executive action, she disputed that. If this type of action—the first of its kind—is signed by Trump, Buccino said her group is prepared to take it to court.

Buccino said the act gives the president the authority to designate monuments but not to rescind them. Even the part of the law that allows the president to modify a monument declaration has generally been used to expand monuments, she said.

**"Some legal analyses since at least the 1930s have concluded that the Antiquities Act, by its terms, does not authorize the president to repeal proclamations, and that the president also lacks implied authority to do so," the Congressional Research Service said in November. "Under this view, once a President has applied the Antiquities Act to protect objects of historic or scientific interest, only Congress can undo that protection."**

**Buccino also said her group is prepared to fight congressional attempts to overhaul the law as well. The act is still relevant and important, she said, in part because it provides a unique and immediate authority to protect public lands and waters, areas the public values across the political spectrum and the nation.**

**"Unfortunately the path now to passage is a little bit clearer" with a Republican president and majorities in both chambers of Congress, Buccino said.**

**Buccino added: "In the end, I'm hopeful that an attempt to roll back the Antiquities Act will fail because poll after poll show that the American public, both Democrats and Republicans, value the public lands and waters across the nation."**

**Bid for EU GMO Cultivation Approvals Deadlocked**

***Posted January 27, 2017, 02:37 P.M. ET***

***By Stephen Gardner***

**The European Commission will have a "political debate" on proposed authorizations for the cultivation in the EU of three genetically engineered maizes, after countries held back from supporting the authorizations, the commission told Bloomberg BNA.**

**In votes Jan. 27 in the EU Standing Committee on Plants, Animals, Food and Feed, no qualified majority could be reached either for approval or rejection of the three authorizations. In the committee, representatives of European Union countries were 12 against and 10 in favor, with 6 abstentions, in a vote on Monsanto's MON 810, and 13 against and 8 in favor, with 7 abstentions in a joint vote on Dow AgroSciences' 1507 and Syngenta's Bt11.**

**"In principle, we have to go the the appeals committee in this case," for another attempt to achieve a decisive decision of EU countries, but instead the authorizations would be discussed by the commission's top officials Feb. 1, commission spokesman Enrico Brivio told Bloomberg BNA. The commission is the EU's executive arm.**

**The EU's system for approval of genetically modified crops is generally regarded as broken because divisions on the issue between EU countries mean they commonly fail to vote either for or against authorizations.**

**In such situations, the commission is required to step in and approve the authorizations, although they are opposed by some countries, and are criticized by lawmakers in the European Parliament and environmental groups.**

**Brivio did not give details of any alternative options to the current authorization system that commission officials might discuss Feb. 1.**

**Cultivation Approval Sought**

**The proposed authorizations for MON 810, 1507 and Bt11 are also significant because they**

would cover cultivation of the crops in the EU.

The MON 810 approval would be a reauthorization. It is currently the only genetically modified crop with an authorization for cultivation in the EU.

Bart Staes, a Belgian Green member of the European Parliament, said the committee vote was a "disavowal of the commission proposals, but also a sign that member states are not taking their responsibilities seriously when it comes to GMOs."

The commission should "withdraw these drafts completely, or at least until a new procedure is put in place," Staes said.

The European Parliament adopted in October 2016 nonbinding resolutions objecting to the authorizations of the three maizes.

The commission told Bloomberg BNA Jan. 27 that EU countries had a right to prohibit cultivation of the crops on their territories even if the authorizations did go ahead. The commission added that 19 of 28 EU countries have "used this cultivation opt-out clause" either for all or part of their territory.

In the Jan. 27 committee meeting, "a number of member states that have made use of the opt-out voted against the proposed authorizations," the commission said.

Japan to Issue $174 Million in Green Bonds for 2020 Olympics Projects

*Posted January 27, 2017, 9:15 A.M. ET*

*By Chisaki Watanabe*

The Tokyo Metropolitan Government plans to issue 20 billion yen ($174 million) of bonds for the funding of clean energy and energy efficiency projects for the year beginning April 1.

The funds will be used for environmental measures to be adopted at facilities for the 2020 Tokyo Olympic Games and for the installation of LED bulbs in buildings owned by Tokyo, according to a document posted on the metropolitan government's website.

Tokyo issued A$125 million of bonds linked to environmental efforts last November to test the market before committing to a full offering of green bonds. Bonds labeled as green channel their proceeds for projects that save energy, curb pollution and recycle resources, as well as clean transportation and energy.

"All bonds were sold on the day they went on sale," Tokyo Governor Yuriko Koike said during a press conference Jan. 25. "We've gained knowledge from the sale and we plan to issue twice as much this time."

The metropolitan government also plans to set aside 9 billion yen of its budget for the next fiscal year to increase LED lighting at homes and on streets, according to the website. It also plans to allocate 5.5 billion yen to promote the use of hydrogen and fuel cells.

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Japanese Recycler Wants to Convert Used Clothing Into Fuel

*Posted January 27, 2017, 10:45 A.M. ET*

*By Pavel Alpeyev*

**At the end of the movie Back to the Future, mad scientist Emmett "Doc" Brown reappears with his time-traveling DeLorean, newly powered by garbage thanks to a fictional recycling reactor from the future called Mr. Fusion. A company in Japan is building its own Mr. Fusion. It's even bought a replica of the iconic car to promote it.**

**Recycler Jeplan is working to extract cotton fiber from used apparel and convert it to fuel. Jeplan says 1 ton of junked clothing can generate about 700 liters of ethanol, sparing land and water resources that could be used to grow food. The company says it's also developed a way to recycle polyester. That compound is blended into many fabrics to reduce costs, improve durability and make outfits wrinkle-resistant. It's used in about 60 percent of the clothing produced worldwide each year, according to Jeplan, and can be a valuable resource when broken down and reused in new clothing.**

**Recycling plastics, paper, and metals is common, but much of the clothing produced annually around the world ends up in landfills and incinerators. "Only 10 percent of clothing gets recycled, and that includes secondhand sales," said Masaki Takao, co-founder and chief executive officer of Tokyo-based Jeplan. "That's true in every country."**

**Takao and his team are working on a technique that extracts polyester fibers from clothing through multiple distillation and vaporization cycles. The process generates half the amount of carbon dioxide that's produced when making the material from scratch. Getting the polyester to a high level of purity is the hard part, Takao says: "Nobody is doing it, because it's so difficult."**

**Takao left graduate school to found Jeplan in 2007 with Michihiko Iwamoto, a textile salesman for trading companies. The company collaborated with Osaka University to develop the cotton-recycling technology. It began commercial operations in 2010, consulting on recycling matters for clients including Mitsubishi and NTT Docomo. Jeplan has raised about $13 million since its founding and counts Docomo and venture capital firm Jafco among its investors.**

**In Back to the Future, Doc Brown—played by Christopher Lloyd—fed banana peels and a half full can of beer into a coffee-grinder-size Mr. Fusion. Jeplan's process requires a factory. The company is building a plant on the southern island of Kyushu, expected to begin operating this summer, to handle 2,000 tons of clothing per year. Polyester is currently being stockpiled until the factory opens.**

**To promote Jeplan's recycling efforts, Takao ordered a full-size replica of the DeLorean from the movie. He had to submit a formal request to Universal Pictures before the studio sold him the car and granted him promotion rights. He won't say what he paid, but flying the model to Japan cost 5 million yen ($44,000).**

**The DeLorean will spend more time on the road, traveling to shopping malls across Japan to promote Jeplan's work. To compete with conventional production methods, the company needs 30,000 tons of polyester clothing a year. Takao is hoping the car will draw crowds that, after learning more about Jeplan's recycling, will donate items.**

**The company has placed used-clothing collection boxes in 2,100 locations throughout Japan, including at the malls, and teamed with Ryohin Keikaku, the owner of retailer Muji, and 7-Eleven owner Seven & I Holdings. Takao also plans to enlist several apparel makers in the collection efforts and ultimately sell clothing made from the recycled material to the**

manufacturers.

Jeplan is in talks with sports brands and soccer teams worldwide about similar initiatives. Takao sees an opportunity to tap into a strong fan base; plus, players' uniforms are high in polyester content, perfect for recycling. "It's hard to motivate consumers with appeals to earnestness or concern for the earth, but they will join if it's something fun," he says. "By doing these kinds of events, we hope to effect a cultural change around recycling."

The bottom line: Recycling polyester can reduce the clothing that winds up in landfills and cut back on chemicals used in making textiles.

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Germany Blames Coal for Stalled Progress Toward Climate Targets

*Posted January 27, 2017, 8:51 A.M. ET*

*By Brian Parkin*

Coal plants run by RWE AG, Uniper SE and Vattenfall AB are to blame for slowing German progress toward greenhouse gas reduction goals, according to a senior official.

Germany's continued reliance on fossil fuels is cutting into an overall 28 percent drop in emissions compared to 1990 levels, Deputy Environment Minister Jochen Flasbarth said Jan. 26 in Berlin. Even though Germany's done more than other European Union countries to reduce emissions, it remains far away from its 40 percent reduction target by 2020, he said.

"We're sitting on our old coal-fired electricity plants," Flasbarth, the former head of the BUND environmental group, said in a speech to European officials. "We're trying to make adjustments, painful as they might be but the plants just run and run, creating a huge power surplus and bulk CO2."

Government data to be released toward the end of the first quarter is likely to show that carbon dioxide emissions rose a second consecutive year following a 0.7 percent increase in 2015. German politicians are struggling to keep a lid on debate over the future of the nation's 148 lignite and hard coal plants. Major curtailment are unlikely before federal elections in September, when potential votes in coal regions could be key.

With Chancellor Angela Merkel girding for a fourth term, coal has taken on greater political dimensions. Germany's most populous state, North Rhine-Westphalia, still hosts the nation's highest concentration of coal plants and is holding regional elections in May. Economy and Energy Minister Sigmar Gabriel said this week that he doesn't want public debate on phasing out coal.

Europe's biggest economy—and emitter of carbon dioxide—released 908 million tons of greenhouse gases in 2015, according to preliminary estimates of the AGEB energy sector research group, Coal plants account for about a third of the emissions.

Even as Germany has installed more renewable energy than any other country in the EU, it still relies on coal for about 42 percent of its power. In 2015, coal plants emitted about a third of the country's carbon dioxide, or 245 million tons, Michael Strogies, who leads emissions analysis at the Federal Environment Agency in Dessau, said in a Jan. 27 interview.

Coal plant owners like RWE and Uniper continue allowing coal plants run at full capacity

even as wholesale prices are squeezed. Awash with coal, gas and clean power, Germany last year created surplus generation equal to about 50 terawatt-hours, "enough to keep the lights on in a small state," Strogies said.

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## Abandoned S. Africa Mine Now 'Catastrophe,' Groups Say

*Posted January 27, 2017, 9:07 A.M. ET*

*By Paul Burkhardt*

The closing of the Blyvooruitzicht gold mine in South Africa resulted in a humanitarian "catastrophe" and the government must protect the rights of residents who were neglected, according to advocacy groups.

The mine, about 80 kilometers (56 miles) west of Johannesburg, started production in 1942 and was operated by companies including DRDGold Ltd. and Village Main Reef Ltd. before going into liquidation in 2013. Lawyers for Human Rights, based in Johannesburg, and the Paris-based International Federation for Human Rights, gathered data from about 300 households in the area and found that 60 percent of them said they didn't have enough to eat or the ability to support their children.

"The catastrophe at Blyvooruitzicht is the result of a toxic cocktail involving private-sector abdication of responsibility, an inadequate legislative framework and state enforcement effort," the groups said in a report released Jan. 27.

Since the closure of the mine, the community of about 6,000 people has struggled to keep water and power connected to the area, Michael Clements, a representative for Lawyers for Human Rights, said Jan. 27. "This is much more than a collapse of the business," she said.

Maintenance of the site ceased after the liquidation, leaving residents exposed to radioactive dust from the mine waste areas and raw sewage in the streets due to the breakdown of infrastructure, according to the report. The community also is concerned about the possibility it could be evicted from the property, which belongs to the mine, and hasn't been able to obtain information from the state or companies over the status of the site.

A rehabilitation fund required for the mine hasn't been accessed and is inadequate to address the issues, Clements said.

Illegal miners have continued to work in the area, attacking the community, and buildings have been stripped by scrap dealers, said Pule Molefe, a representative of the Blyvooruitzicht Residents Committee.

"It's so painful because no one seems to care," he said. "Let us not allow another mine to go through what Blyvoor has gone through."

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