To: Perry, Tracy[Perry.Tracy@epa.gov]
From: Bloomberg BNA
Sent: Thur 5/4/2017 8:01:58 PM
Subject: [SPAM] May 4 -- Daily Environment Report - Afternoon Briefing

Daily Environment Report

Afternoon Briefing - Your Preview of Today's News

The following news provides a snapshot of what Bloomberg BNA is working on today. Read the full version of all the stories in the final issue, published each night. The Bloomberg BNA Daily Environment Report is brought to you by EPA Libraries. Please note, these materials may be copyrighted and should not be forwarded outside of the U.S. EPA. If you have any questions or no longer wish to receive these messages, please contact Josue Rivera-Olds at rivera-olds.josue@epa.gov, 202-566-1558.

Biofuel Waiver Use by EPA May Withstand Remand, Attorneys Say

Posted May 04, 2017, 11:38 A.M. ET

By Brian Dabbs

An expected remand of recent EPA biofuel blending requirements isn't a guaranteed gift to the program's supporters, attorneys and analysts told Bloomberg BNA.

The U.S. Court of Appeals for the District of Columbia is poised to decide the case in the coming weeks following oral arguments late last month (Ams. for Clean Energy v. EPA, et al, D.C. Cir., 16-1005, argued 4/24/17). Uncertainty prevails about the details of the decision, and there is no clear precedent, the attorneys said. Still, they said that based on what the judges said during the hearing, it was likely the court would send the rule back to the Environmental Protection Agency for revision.

If that happens, the EPA has options to maintain the quotas under challenge, which cover 2014 to 2016, or even reduce them further, attorneys and researchers said. That would be a setback to the biofuel industry's efforts to get the agency to stop using waivers that reduce the biofuel blending mandates below the target levels set by law.

'It's a Supply Problem'

Judges Brett Kavanaugh and Patricia Millett questioned the EPA's 2014 to 2016 required biofuel volumes and its defense for why it used waivers to allow lower amounts than required by law. The EPA said that waivers were needed largely because of insufficient demand for biofuels.

The agency is able to issue a similar requirement using a supply argument that provides better legal insulation, H. Sterling Burnett, a policy research fellow at the free-market Heartland Institute, told Bloomberg BNA.

"Even if the court throws it out, that doesn't necessarily give a victory to ethanol promoters because the EPA can come back and say 'it's not a demand problem, it's a supply problem,'" Burnett said. "There's nothing stopping the agency from issuing the exact same standard and doing a different

justification for it."

"It needs to be set on what you expect the market supply situation to actually look like, the reality of it not the pipe dream because if you issue a pipe dream, you'll get sued," he said. "If you issue the reality, you may still get sued but you'll have evidence backing you up."

The renewable fuel standard directs the EPA to require annual increased blending of conventional ethanol and advanced biofuel set by Congress in 2007. Congress designed the program to reduce greenhouse gas emissions and give the U.S. more energy independence.

The underlying goal of the statute is to create a biofuel market, rather than respond to existing production.

Refiners and importers comply with the rules by blending fuel or purchasing credits called Renewable Identification Numbers. The 2014 to 2016 rule undercut congressional targets in each year for both ethanol and advanced biofuels, which include biomass-based diesel and cellulosic biofuel made from switchgrass and agricultural waste.

The statute's waiver authorities focus on insufficient biofuel supply and economic harm.

Blend Wall Concerns

The EPA upped its quotas in the 2017 rule, meeting the congressional target of 15 billion gallons of blended ethanol. But the agency remains concerned about hitting the blend wall, a term used to describe a blending mandate that is above the amount of biofuel refiners and marketers can actually absorb, Chuck Wehland, a partner at Jones Day, told Bloomberg BNA.

"EPA doesn't think it's possible for refiners and marketers to blend as much biofuel as the statute commands them to," Wehland said. "I think EPA is going to find some way to express that in the rulemaking, whether it's focusing on supply or demand or some other factor."

The primary reason for the market constraints, Wehland said, is lower-than-expected petroleum consumption nationwide due to EPA fuel economy standards and increasing electric vehicles.

The energy statute directs the EPA to issue RFS proposals in the spring each year in order to finalize rules by Nov. 30. The agency didn't respond to a Bloomberg BNA request for comment.

EPA Administrator Scott Pruitt has criticized the RFS program in the past, but said he would implement it according to the law during his confirmation process. President Donald Trump, on the other hand, garnered significant support from the Corn Belt pledging to champion ethanol.

General Waiver in the Crosshairs

The biofuel challengers, led by the National Biodiesel Board and the American Coalition for Ethanol, are aiming to crack down on the EPA's use of the general waiver, which applies to the conventional ethanol requirements, in future rulemakings.

A waiver isn't needed if the EPA continues to require 15 billion gallons of blended ethanol annually, the top line quota in the energy statute. The statute directs specific targets through 2022.

"The problem is they many not want to do that for a variety of reasons," Kevin Book, head of

research at ClearView Energy Partners, told Bloomberg BNA. “The blend wall is going to get increasingly tight the way we look at it because we see gasoline demands down this year and declining thereafter.”

Retroactive Compliance Unlikely

Even in the event of a remand, the court likely won’t require retroactive compliance with elevated biofuel quotas for 2014 to 2016, a decision that would be a logistical challenge with shaky legal standing, the experts said.

“I would call that an unorthodox solution for trying to solve the problem,” Book said. “It would create new problems that were bigger perhaps than the old problems.”

Byron Dorgan, a former senator from North Dakota and policy adviser at Arent Fox LLP, told Bloomberg BNA the court could, however, direct refiners and importers to blend more biofuel moving forward to compensate for the 2014 to 2016 underbid, a prospect that would likely invite tension between the agency and the ruling. Dorgan helped author the energy statute that included the RFS.

EPA Mulls Dow, FMC Requests to Redo Endangered Species Studies

Posted May 04, 2017, 9:13 A.M. ET

By Tiffany Stecker

An EPA official appeared to welcome the opportunity to re-evaluate three contentious scientific assessments on pesticides that harm rare species, saying the agency wanted more time to finish the evaluations before fully considering outside recommendations.

Anita Pease, the agency’s acting associate director for the Office of Pesticide Programs’ Biological and Economic Analysis Division, said May 3 that the agency is considering revising the biological evaluations on chlorpyrifos, malathion and dianazon. Reports found that nearly all threatened or endangered species would be affected by two of the three insecticides.

Manufacturers of the pesticides—Dow Agrosciences LLC, Makhteshim Agan of North America (ADAMA) and FMC Corp.—have encouraged the Environmental Protection Agency to roll back the evaluations, as has the pesticide trade group CropLife America and other pesticide makers. The manufacturers criticized the EPA’s scientific approach to assessing the risk to species, saying the agency did not follow guidelines in a 2013 National Academies of Science report on the issue.

“Some of the recommendations we agree with,” Pease told the Pesticide Program Dialogue Committee, a panel of state groups, manufacturers, farming associations and environmental interests, in Washington. The agency would like the opportunity to review industry’s input “given the time to do so.”

Frustrating Deadlines

Under the Endangered Species Act, the EPA is required to consult with the NOAA Fisheries Service and the U.S. Fish and Wildlife Service on possible harm to plants and animals before approving pesticides for sale.

Years of failure to do so triggered litigation and an eventual lawsuit that set a Dec. 31 deadline for NMFS to finalize biological opinions for the three organophosphate pesticides, based on the EPA evaluations (Ctr. for Biological Diversity v. U.S. Fish and Wildlife Service, N.D. Cal., 3:11-cv-05108, 7/28/14). Two other insecticides, carbaryl and methomyl, must have final opinions by December 2018.

EPA has struggled to evaluate the three pesticides—which have generated tens of thousands of pages of analysis—under the court-ordered deadline. Industry asked for an extension to comment on the draft evaluations, but the agency said the legal requirements could not allow for delay.

The constrained timeline has vexed agricultural groups as well, Gabriele Ludwig, director of sustainability and environmental affairs for the Almond Board of California, said.

“This has been frustrating in terms of having a deadline that then doesn’t allow us to have a transparent process going forward,” Ludwig said.

The biological evaluations released Jan. 17 found 97 percent of the more than 1,800 species are likely to be harmed by malathion and chlorpyrifos. Diazinon affects about 78 percent of animals and plants listed under the ESA. A redo will likely shrink the number of adversely affected species, Pease said.

“I think, yes, we would expect different conclusions,” she said.

11th Hour Attempt

Environmental advocates on the committee, who represent the groups that sued the agency for failing to comply with the ESA, lambasted the effort to change the course of the evaluations nearly three years after the 2014 settlement.

“It seems late in the game to get this kind of request,” Sharon Selvaggio, water and wildlife program director at the Northwest Center for Alternatives to Pesticides, said.

“It’s increasingly frustrating to see the agency considering this 11th hour attempt,” Lori Ann Burd, environmental health program director with the Center for Biological Diversity, said.

But Ray McAllister, senior director for regulatory policy at CropLife America, said the evaluations don’t reflect what scientists have seen in the field.

“We don’t see declines in those species,” he said. “I think it’s worthwhile to re-evaluate.”

Opportunity for New Methods

The pesticide industry wants to refine the first two steps in a three-step process for assessing effects on the listed species, Pease said. These are where the EPA first designates a “no effect” or “may affect” status, followed by a “not likely to adversely affect” or “likely to adversely affect” call for those that fall in “may affect” in the first step. It is these two steps that determine whether EPA must consult with the wildlife agencies for a pesticide.

The EPA could apply new risk assessment methods that have not typically been used in pesticide assessments, if the agency does re-evaluate the studies, said Pease.

Pease said that, pending a decision on the requests, EPA is set to release the wildlife services' draft biological opinions for chlorpyrifos, diazinon and malathion for a 60-day public comment period in late May or early June.

The EPA has also agreed to determine the effects of four herbicides—atrazine, simazine, propazine and glyphosate—by 2020, under the terms of a separate legal settlement.

Illegal Dumping Alleged in N.Y. Lawsuit Against 34 Companies

Posted May 04, 2017, 03:21 P.M. ET

By Gerald B. Silverman

Thirty-four construction companies, waste haulers and waste brokers were sued by New York in federal court May 4 for dumping contaminated construction and demolition debris and soil in a town park in Suffolk County.

The lawsuit, filed in U.S. District Court for the Eastern District of New York, alleges that the companies violated the Comprehensive Environmental Response, Compensation, and Liability Act by dumping wastes that included toxic chemicals, heavy metals and pesticides. The defendants include All Island Masonry & Concrete, Inc., Touchstone Homes LLC, and IEV Trucking Corp.

The Roberto Clemente Park was closed in 2014 as a result of the contamination (Seggos v. Datre, E.D.N.Y., unknown, 5/4/17).

Maryland Pioneers Tax Credits for Energy Storage

Posted May 04, 2017, 03:22 P.M. ET

By Leslie A. Pappas

Maryland will become the first state to offer a tax credit for energy storage systems under a new law Gov. Larry Hogan (R) signed May 4.

Senate Bill No. 758 offers a state income tax credit for up to 30 percent of the cost of installing an energy storage system.

Energy storage helps provide consistent energy supplies for those with solar panels or wind turbines during intermittent sun, wind periods.

Hogan also signed House Bill No. 773, which calls for a study by Dec. 1, 2018 of regulatory changes and market incentives to increase the use of energy-storage devices in the state.

The new laws pave the way for the state to become a leader in the energy storage industry by offering incentives for energy storage while also studying how to increase it, according to the Energy Storage Association, a trade group.

"Those two pieces of information together will make Maryland a very robust market," Matt Roberts, the association's executive director, told Bloomberg BNA May 4.

Several States Have Passed Bills

Hawaii has tax credits to reduce energy loads, and California has a subsidy for energy storage systems, but Maryland's law is the first state tax credit dedicated solely to energy storage, Roberts said. A few other states, such as California and Massachusetts, have passed bills to study the issue.

Maryland's law is also notable in that it includes all types of energy storage, not just batteries, and is focused on both residential and commercial properties, rather than large systems operated by utilities.

Under the new Maryland law, credit for energy storage system can go up to $5,000 for a residential system or $150,000 for a commercial one. The credit could decrease state revenues by as much as $3 million by 2022.

The law will take effect July 1 and apply beginning in the 2018 tax year.

PODCAST: Environmentalists Saying Good Riddance to NAFTA

Posted May 04, 2017, 6:00 A.M. ET

By David Schultz

It looks like some big changes are coming to the North American Free Trade Agreement, also known as NAFTA. The Trump administration is saying it wants to tweak many of its provisions, although earlier it talked about shredding the entire agreement.

Are green groups worried that the environmental protections that were included in NAFTA would vanish? Actually, no.

This week on our biweekly podcast, Parts Per Billion, we speak with Bloomberg BNA reporter Dean Scott about why environmentalists never really liked NAFTA and wouldn't be very upset if it was swept into the dustbin of history. Dean also talks about why a reopening of NAFTA might actually provide environmentalists with an opportunity to make some progress on climate change—even with Trump at the negotiating table.

To listen to the latest episode of Parts Per Billion, click here.

EU Could Further Restrict Chemicals Left on Skin, Used in Wipes

Posted May 04, 2017, 02:35 P.M. ET

By Stephen Gardner

The European Chemicals Agency called for information on two hazardous chemicals used in skin products, tissues and wipes, a step that could lead to further restrictions in the European Union.

The agency said it was seeking information through Aug. 3 on the uses of the chemicals—octamethylcyclotetrasiloxane (D4) and decamethylcyclopentasiloxane (D5)—in preparation for a possible restriction under the European Union's REACH law (Regulation No. 1907/2006 on the registration, evaluation and authorization of chemicals).

The European Commission, the EU's executive, has already drafted a REACH restriction that would

limit to 0.1 percent by weight the presence of D4 and D5 in hair conditioners, shower gels and similar wash-off products. The commission circulated a draft regulation containing the restriction in March to World Trade Organization members.

D4 and D5 are used as hair and skin-conditioning agents. D4 is classified in the EU as reprotoxic and harmful to aquatic life, while D5 is considered very persistent and very bioaccumulative.

The chemicals agency told Bloomberg BNA May 4 that an extension of that restriction was now being considered to products designed to be left on the skin and to other products containing D4 and D5, such as tissues and wipes. Information on other uses of the chemicals, such as in electronics and textiles, can also be submitted, according to the call for information.

The substances also are used in the manufacture of silicone polymers, and are produced in, or imported into, the EU in annual volumes of up to 1 million metric tons.

China Warns Pollution-Plagued Cities to Step Up Enforcement

Posted May 04, 2017, 03:15 P.M. ET

By Michael Standaert

China's government has warned 19 major cities to enforce laws and regulations after finding none of the cities—despite worsening environmental quality—had any violations of the country's Environmental Protection Law in the first quarter of 2017.

The situation ran counter to a nationwide trend of a rise in the number of instances that local environmental, public security and prosecutorial bureaus across the country are separately pursuing, according to remarks posted May 2 on the environmental protection ministry's website from Tian Weiyong, head of environmental supervision bureau.

Nearly 5,000 environmental criminal cases occurred in the first quarter—a 195 percent increase compared to the first three months of 2016, Tian said.

The cities with no Environmental Protection Law violations were in the provinces or autonomous regions of Hebei (Qinhuangdao, Zhangjiakou, Chengde), Guangdong (Maoming, Qingyuan), Liaoning (Fushun, Tieling), Jilin (Jilin City, Baishan, Siping, Songyuan), Heilongjiang (Jiamusi, Qitaihe, Suihua), Guangxi (Liuzhou, Baise), Gansu (Dingxi) and Ningxia (Yinchuan, Zhongwei).

Companies Fined in 224 Cases

Tian said local environmental and other authorities had fined companies in 224 cases in the first quarter, with a total of 26 million yuan ($3.7 million) in daily accumulating penalties given out to companies between the time their violation was found and the time they rectified the problem.

One incident involved a recycling company in Chengdu, Sichuan province. Mengyi Recycling was found to have collected a large amount of waste batteries that led to heavy soil pollution where the batteries were stored. The case has been transferred to the local public security.

In more than 1,200 cases, companies were ordered to halt or limit production. And in 387 instances, environmental bureaus transferred cases to public security for criminal investigation.

China is a month into a year-long pollution inspection campaign that focuses largely on provinces in the northeast around Beijing, where much of the air pollution that plagues the capital originates.

On May 1 alone, inspection teams checked around 240 businesses in Beijing and nearby provinces and found 69 percent with environmental violations. The environment ministry has been releasing near-daily reports on the inspections since early April, with the percentage of violations hovering around 70 percent of the companies inspected.

Air Pollution Action Plan

2017 also marks the final year of an air pollution action plan launched in late 2013, which has focused on improving air quality in areas around Beijing, Shanghai and the Pearl River Delta in Guangdong province.

Authorities have said most large and medium-sized companies in these areas have improved controlling their emissions. But they said a larger number of small and less-regulated factories—which China calls "scattered pollution sources"—remain a concern in the latest inspection campaign.

Also on May 2, Beijing separately announced that it would pay citizens up to 50,000 yuan ($7,200) in rewards for information on environmental violations if the information proved to be accurate.

Earthjustice Taps Ex-Justice Official for Litigation Post

Posted May 04, 2017, 02:37 P.M. ET

By Maeve Allsup

Patrice Simms, former deputy assistant attorney general at the Justice Department, will head up Earthjustice's litigation practice in Washington, D.C., the environmental law firm announced.

After serving on the Earthjustice board of trustees for five years, Simms' new role will focus on issues of national clean air, clean water and toxics at the Environmental Protection Agency and other agencies, he told Bloomberg BNA.

"My deep background with environmental statutes, working with EPA and the DOJ and a previous role in environmental nonprofit put me in an exceptional position to be able to jump in and hit the ground running when it comes to the nuances of the environmental policy issues that we will be dealing with," Simms said. "In addition, I have a particular interest in and closeness to issues related to environmental justice, and the impacts of our environmental decision making on communities, especially those communities that are most vulnerable."

Part of the work Earthjustice does to defend environmental laws and advocate for strong protections must recognize the importance of protecting those vulnerable communities, Simms said. "The fundamental tenet of environmental justice is to allow communities to speak for themselves, and have a role in the decisions that affect their well-being."

In the Obama administration, Simms served in the Justice Department's Environment and Natural Resources Division, where he oversaw the law and policy, land acquisition and environmental defense sections in addition to managing the division's environmental justice implementation projects.

Simms also spent more than 11 years at the EPA.

EU Parliament Panel Opposes Genetically Modified Corn, Cotton

Posted May 04, 2017, 02:22 P.M. ET

By Stephen Gardner

The European Parliament's environment committee May 4 objected to plans to allow products containing two genetically modified crops onto the European Union market.

The committee voted 35 to 19 to oppose food and feed containing a GM corn, DAS-40278-9, and 38 to 15 to oppose products containing the GM cotton GHB119.

EU authorization for DAS-40278-9 is being sought by Dow AgroSciences, while Bayer CropScience has applied for an authorization for GHB119.

The committee said it was concerned that the corn and the cotton were resistant to hazardous herbicides and could encourage greater herbicide use.

But the committee's objections are nonbinding, and the European Food Safety Authority has said that both products are safe.

Call for Overhaul

The objections are part of an ongoing campaign by the European Parliament to push the EU to overhaul its system for GM approvals. The draft parliament resolutions objecting to the authorizations said no GM crop should be approved while the current "inadequate" system remains in place.

In the current system, adoption of GM approvals is commonly left to the European Commission, the EU's executive arm, because votes in regulatory committees of EU country representatives fail to produce decisive results either for or against an approval. The environment committee's objections said that meant the commission was exceeding its powers.

To be finalized, the objections approved by the environment committee must be ratified by the full European Parliament, which is scheduled to vote on them during a May 15-18 session.

Illegal Dumping, Toxic Sewage Pits Plaguing China

Posted May 04, 2017, 01:52 P.M. ET

By Michael Standaert

Recent incidents in China of illegal hazardous-waste dumping and the discovery of massive toxic waste-filled pits have highlighted the country's enforcement problems related to industrial waste.

Those problems come on top of the soaring economic burdens of dealing with accumulating trash: China pledged earlier this year to devote $37 billion to deal with growing amounts of residential waste through 2020 through landfills, incineration, recycling and sorting.

In the most recent incident, a criminal gang illegally dumped 40 metric tons of sulfuric acid into the Le'an River in Jiangxi province on five separate occasions in April, seriously polluting the river and nearby environment, state-run broadcaster CCTV reported May 2.

And last month, an environmental group exposed the existence of 20 large ponds full of untreated industrial wastewater in Hebei province and Tianjin municipality, with a water surface area totaling around 300,000 square meters (3.2 million square feet). The revelation prompted a large-scale investigation by the Ministry of Environmental Protection (MEP), which is seeking a remediation plan by the end of July.

'Manifestation of the Problematic System'

"These two cases are just the manifestation of the problematic system, the lack of a sewage treatment systems, the lack of local enforcement, and insufficient hazardous waste treatment capacity," Ada Kong, toxics campaigner at Greenpeace East Asia, told Bloomberg BNA. "The government should fix the whole system in order to effectively solve the problem."

In the Le'an River case, the gang doing the illegal dumping was paid between 800-1000 yuan [$115 to $145] for each time they dumped the sulfuric acid, far below the average cost of treatment per ton through proper channels, according to the CCTV report.

The MEP said local governments had known about the toxic waste pits in Hebei and Tianjin for at least four years and had started cleanup on 18 of them, though it also ordered those governments to come up with full remediation plans by the end of July.

China Bets $1.2 Billion on Electric Cars in Volkswagen's Germany

Posted May 04, 2017, 9:54 A.M. ET

By Brian Parkin

China's Beijing WKW Automotive Parts Co. is betting on the future of electric mobility in Germany with a billion euro factory nearby plants owned by Volkswagen AG and BMW AG.

Beijing WKW will invest as much as 1.13 billion euros ($1.24 billion) on an electric car factory in the eastern state of Saxony that will create over 1,000 new jobs, according to a statement by the regional government May 4. Saxony courted WKW to set up manufacturing in the state to produce "premium" electric cars, according to the statement.

"Saxony is already a car state and we want that to remain so in the future," regional Economy Minister Martin Dulig said. WKW hasn't applied for state aid to set up the factory, Economy Ministry spokesman Marco Henkel said by telephone May 4.

The Chinese company's investment is occurring just as German carmakers gear up to boost production of electric vehicles. Saxony is already home to plants owned by Volkswagen and BMW. WKW will benefit from proximity to about 750 car part suppliers in the region, according to the statement.

Saxony Automakers

Beijing WKW, 25 percent owned by German's WKW Erbsloh Automotive GmbH, will invest through its subsidiary Delon Automotive GmbH to develop and manufacture the vehicles, according to company filing May 3. Calls to the company's investor relation department are not answered outside of regular office hours.

Wuppertal-based WKW-Erbsloeh Automotive GmbH won't be providing financing for the project in Saxony, company spokeswoman Monika Kocks said by phone May 4.

©2017 Bloomberg L.P. All rights reserved. Used with permission

Privacy Policy | Terms of Service | Manage Your Email | Contact Us

1801 South Bell Street, Arlington, VA 22202
Copyright © 2017 The Bureau of National Affairs, Inc. .
Daily Environment Report for EPA