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From: Bloomberg BNA
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Subject: April 21 -- Daily Environment Report - Afternoon Briefing

Daily Environment Report

Afternoon Briefing - Your Preview of Today's News

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VW to Pay $2.8 Billion Criminal Fine Over Emissions Cheating

Posted April 21, 2017, 02:23 P.M. ET

By Patrick Ambrosio

Volkswagen AG will pay a $2.8 billion criminal fine over its diesel emissions cheating scandal after a federal judge signed off on a settlement between the automaker and the U.S. government.

The automaker pleaded guilty to several criminal charges, including conspiracy and obstruction of justice, related to the use of illegal technology that allowed its diesel engine vehicles to pass emissions tests despite emitting more pollution than allowed. U.S. District Judge Sean Cox accepted a guilty plea from Volkswagen in March, but didn't approve the agreed-upon fine until an April 21 hearing in Detroit, according to the court's docket (U.S. v. Volkswagen AG, E.D. Mich., No. 2:16-cr-20394, 4/21/17).

In addition to the criminal fine, Volkswagen also will be under probation for three years, during which it will be subject to the oversight of an independent compliance monitor. The U.S. Justice Department in an April 21 statement announced that Larry Thompson, a former deputy attorney general under President George W. Bush, would serve in that role.

The criminal case against Volkswagen sends "a strong message" to companies that the U.S. will prosecute parties who defraud the Environmental Protection Agency, according to a statement by Acting U.S. Attorney Daniel Lemisch of the Eastern District of Michigan.

In addition to the criminal fine, Volkswagen has agreed to spend billions in the U.S. to buy back or repair its diesel engine vehicles, fund environmental remediation projects intended to fully offset the excess pollution linked to their diesel fleet and invest in electric vehicle infrastructure across the country.

Proprietary Data at Risk By Science Bill, EPA Staff Say

Posted April 21, 2017, 02:19 P.M. ET

By Pat Rizzuto

House-passed legislation would prevent the EPA from protecting proprietary chemical, pesticide or other data that companies submit, according to a staff analysis of the bill quashed by agency leadership.

It also could hinder the Environmental Protection Agency's ability to fulfill its mandates under a chemicals law amended last summer by Congress, the staff said.

The Honest and Open New EPA Science Treatment (HONEST) Act of 2017, H.R. 1430, would require the EPA to disclose even redacted information to anyone who signed a confidentiality agreement, staff said in an analysis written for the Congressional Budget Office. EPA leaders blocked the staff comments from reaching the Congressional Budget Office, which scores costs of the legislation, Bloomberg BNA first reported April 3.

The bill's requirement that the agency release redacted information means it could not protect trade secrets or intellectual property, according to EPA staff. Patients' medical records and other personal information gathered by academic or clinical researchers also would be at risk of forced disclosure, staff said.

The House approved the bill on a 228–194 vote March 29 that mostly followed party lines. The legislation would mandate all research used in EPA assessments and regulations be publicly available and reproducible. The House bill came to the Senate's Environment and Public Works Committee, where Chairman John Barrasso (R-Wyo.) has indicated an openness to addressing the issue, but no hearing is scheduled. Nor has a companion Senate bill been introduced as of April 21.

Congress Urged to Protect Data

Any legislation that would pass Congress must protect confidential business information and other competitive intelligence, the American Chemistry Council said in a statement provided Bloomberg BNA. The council, U.S. Chamber of Commerce and American Farm Bureau Federation are among the bill's supporters.

Stephen Caldeira, president of the Consumer Specialty Products Association, didn't voice a position on the bill, but said by email that the association supported "a common-sense balance between transparency and the protection of confidential business information."

EPA staff's analysis raised many other concerns about the HONEST Act, saying the legislation would "grind to halt," the agency's efforts to implement the Toxic Substances Control Act amendments of 2016.

For example, instead of using the best available science, as the TSCA amendments required, the agency would have to use only studies that meet the bill's public availability standards, staff said. "This approach would introduce research bias that would compromise the quality of the agency's work," staff said. Many computer-aided analyses would not qualify, because the computer codes and models used in them are typically not available, it said.

Opponents Share EPA Concerns

Joanna Slaney, a legislative director for health at the Environmental Defense Fund, said that group opposes HONEST Act for many of the reasons highlighted in the EPA staff memo.

"We believe that the agency must be able to rely on the best available science in order to protect public health and that the HONEST Act would prevent EPA from doing so. The impact of the HONEST Act on TSCA, in effect preventing the agency from reviewing and regulating chemicals under this recently passed, strongly bipartisan law, is just one area of particular concern," Slaney said by email.

Other opponents of the bill include the American Lung Association, Environmental Defense Fund and American Geophysical Union.

Architect of Chemical Law Now Lobbying EPA

Posted April 21, 2017, 12:14 P.M. ET

By Rachel Leven

Former Sen. David Vitter (R-La.), an architect of the landmark chemical law passed last year, is now lobbying the EPA on regulatory issues on behalf of a major chemical organization, federal records show.

The American Chemistry Council is just one of the handful of environment-related clients that Vitter, who now works at public strategy firm Mercury Public Affairs, has attracted in his first three months out of Congress. Vitter is currently not allowed to lobby his former colleagues, but has started to lobby the Trump administration.

Vitter's trek to K Street isn't rare. More than 400 former Washington lawmakers have turned around and joined the advocacy community, according to the Center for Responsive Politics. They include former Rep. Bart Stupak (D-Mich.), who served in Congress from 1993 to 2010 and now is a partner at Venable LLP, and former House Speaker John Boehner (R-Ohio), who served in Congress from 1991 to 2016 and currently works for Squire Patton Boggs as a senior strategic adviser.

Bloomberg BNA obtained its information on Vitter's lobbying through Senate Office of Public Records filings. April 20 marked the deadline for filing records of lobbying that occurred between Jan. 1 and March 31.

Senators are barred from lobbying the legislative branch for two years after leaving their seats. Vitter, who left the Senate after a failed run for Louisiana governor, served in the House from 1999 to 2005 and Senate from 2005 to 2017 and plans to lobby Congress when his "cooling off" period is over, he told Bloomberg BNA in an email.

Environmental Lobbying Work

Vitter did not provide specifics about his work for the American Chemistry Council. The federal form shows he lobbied the Environmental Protection Agency on "regulatory issues." Scott Openshaw, a spokesman for the council, told Bloomberg BNA in an email that Vitter will be "focused on a range of regulatory issues at EPA including those related to chemical management," but didn't comment further on the council's regulatory priorities.

Also on Vitter's environmental docket is the the Cabot Corp., a chemicals and performance materials business. The corporation has paid the former senator to lobby on "Clean Air Act issues," a first-quarter filing shows. Vanessa Craigie, a spokeswoman for Cabot, in an email would only say the former senator is working with the company on "environmental regulatory issues" and didn't

provide additional details on its Clean Air Act priorities.

Additionally, Vitter is registered to lobby in the future for the Air-Conditioning, Heating, & Refrigeration Institute. He will be a part of a team monitoring issues such as budget happenings for the Energy and State departments, a filing shows.

Mercury's work for the air conditioning group will also include monitoring the status of the Kigali Amendment to the Montreal Protocol on Substances That Deplete the Ozone Layer that would phase down use of super-polluting hydrofluorocarbons. The institute has told Bloomberg BNA that the amendment, which was reached in October 2016, should be protected.

Vitter also will lobby on "mitigation issues" on behalf of the Morganza Action Coalition, which focuses on flood protection.

The former senator also is working on issues outside the environment sector, such as infrastructure and Justice Department-related topics. For example, he is registered to lobby the Atlantic Development Group, a real estate, rental and leasing company, on nonenvironmental issues.

Vitter's Experience

Vitter, who chaired the Senate Environment and Public Works Committee from 2013 to 2015 and later chaired a subcommittee, was a major voice in the environmental space in his final years in the Senate. He is perhaps best known for winning re-election in 2010 despite his earlier involvement with a Washington, D.C., escort service, though the scandal contributed to his defeat in the governor's race.

The former senator played key roles in passing water infrastructure legislation (Pub. L. No. 113-121) and the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Pub. L. No. 114-182).

He also notably held up for 135 days the confirmation of Gina McCarthy to be EPA administrator under then-President Barack Obama (D) due to transparency concerns related to the agency. When he led the environment committee, he was known for his frequent letters to federal agency heads.

Dow, FMC Try to Overturn Pesticide Endangered Species Findings

Posted April 21, 2017, 7:02 A.M. ET

By Tiffany Stecker

Three companies are trying to roll back the federal government's attempts to protect imperiled species from pesticides, after years of work—and legal wrangling—over how agencies comply with endangered species law while supporting agriculture.

David Weinberg, an attorney representing Dow Agrosciences LLC, Makhteshim Agan of North America, (known as ADAMA), and FMC Corporation, sent letters to top administration officials on April 13 to stop three court-ordered opinions on pesticides found to harm plants and animals listed under the Endangered Species Act (ESA).

Weinberg, who works in the Washington office of Wiley Rein LLP, asked Commerce Secretary Wilbur Ross, Interior Secretary Ryan Zinke and Environmental Protection Agency Administrator Scott Pruitt to put the brakes on biological opinions for chlorpyrifos, malathion and diazinon—

decades-old pesticides that kill insects by overstimulating the nervous system and that have been linked to cognitive delays in children exposed in utero.

The letter, first reported April 20 by the Associated Press, is an effort to change the course of key agencies under the Departments of Commerce and Interior. The National Marine Fisheries Service and the Fish and Wildlife Service are set to publish their ESA opinions by December 31, 2017, based on the EPA's biological evaluations finding that 97 percent of endangered or threatened species are vulnerable to chlorpyrifos and malathion.

A spokeswoman for the Interior Department did not say whether the Fish and Wildlife Service would consider delaying its biological opinions.

"The Secretary has had no meetings on the subject with any of the parties mentioned," said spokeswoman Heather Swift.

The EPA and Commerce press offices did not respond to a request for comment on the letters.

'Years of Work Went Into This'

The evaluations "are fundamentally flawed and should be set aside," Weinberg told the officials, citing a lack of transparency and the inclusion of species not protected under the ESA. Weinberg also criticized the EPA's choice of studies and data analysis to make their claims, and for making "unrealistically high and sometimes physically impossible estimates" on exposure to the pesticides.

The use of organophosphates has tumbled by half since 2005, according to recent data from the Freedonia Group, a market research firm. The upcoming biological opinions represent a sliver of the thousands of chemicals that likely harm rare species, say environmental groups. The three pesticides are the first to go through a nationwide process to evaluate the impact, and are a test model for future assessments of pesticides, said Amanda Goodin, a staff attorney in Earthjustice's Seattle office.

The letters "send a clear message that they are not interested in protecting species, and are willing to just scrap the science for not just these pesticides, but other pesticides around the country," Goodin told Bloomberg BNA. "Years of work went into this; the agency's best science went into this."

EPA released the evaluations of the organophosphates in January, representing three of the five pesticides at issue in a 2014 settlement between the nonprofit Center for Biological Diversity and the Fish and Wildlife Service (Ctr. for Biological Diversity v. U.S. Fish and Wildlife Service, N.D. Cal., 3:11-cv-05108, 7/28/14). The December 2017 deadline for the biological decision was reached the same year, in a different federal court (NCAP v. NMFS, W.D. Wash., 2:07-cv-01791, 05/21/14). The evaluations for the three pesticides took at least four years to complete, she said. The next set of evaluations are expected to take far less time.

Goodin and other environmental advocates have sued the EPA numerous times for not consulting with federal wildlife agencies on whether pesticides they approve harm listed species.

"The reason they're in this mess is they've been violating the law for decades," she said. "It is going to take some time to dig their way out of this hole."

Tight Deadlines on a Tight Budget

The lawsuits have forced the agency to take decisions much sooner than originally anticipated. But they have also placed a heavy burden on an agency already constrained by a shrinking budget and staff.

The pesticide companies' criticism of EPA's scientific analysis is largely a reflection of the agency's workload as it takes on the massive ESA review task with few resources on a tight deadline, said Ya-Wei Li, vice president of endangered species conservation at the nonprofit Defenders of Wildlife. Li is working with companies and the government to improve the process of applying the ESA to the pesticide approval process.

"I agree, it's not perfect," Li told Bloomberg BNA of the data used for the evaluations. "The problem is that that's the only data."

In evaluating effects to species, the agencies create maps at the county level. It's not likely that a rare animal or plant occurs everywhere in a county, but the agencies did not have more precise data at the time they were doing the evaluations. More time is needed to gather the more granular information, something the court deadlines don't provide.

"There's this trade-off between time and quality of this information," Li added. "We can't have it both ways."

But the drawbacks aren't serious enough to warrant a rollback from the administration, Li said.

Bill Jordan retired from his post as deputy director of the Office of Pesticide Programs last year after more than 40 years with the agency. Although he thinks that the EPA and wildlife agencies need to identify pesticides that pose risks and take steps to shield species from those risks, he doesn't think the biological evaluations do much to show whether those concerns are real.

If EPA withdraws the biological evaluations, as requested by the pesticide manufacturers, it could provide an opportunity to improve the assessments.

"My hope is that they would quickly find a better way to assess the risks so that they can fulfill their statutory duties and deal with any real problems that may exist," Jordan told Bloomberg BNA.

According to Jordan, the assessments tend to make conservative assumptions that overstate the risks. EPA also failed to respond to many of the comments that were submitted, he said.

Spotlight on Chlorpyrifos

The letters raises new concerns about Dow's close relationship with the Trump administration. The company donated $1 million to President Donald Trump's inaugural committee. Trump appointed Dow Chairman and CEO Andrew Liveris to head the White House American Manufacturing Council.

EPA's Pruitt denied a petition last month to impose a near-ban on chlorpyrifos, which was first manufactured by Dow, rejecting the previous administration's assessment linking the insecticide to low IQ and other neurodevelopmental problems.

"Dow Chemical wants to suppress the science showing that chlorpyrifos is harmful to everything it contacts. It damages children's brains, contaminates drinking water, poisons workers, and threatens to wipe out Pacific salmon and other endangered species," Patti Goldman, managing attorney for

Earthjustice's Northwest regional office, said in a statement. Goldman is representing environmental groups in a suit seeking to ban chlorpyrifos.

The company defended its efforts to deter the development of the biological opinions.

"In its review under the Endangered Species Act, EPA did not apply its own standards of data quality to much of the information," Dow spokesman David Sousa said in a statement. EPA also didn't follow recommendations on the process in a 2013 report from the National Academy of Sciences, he added.

The company also defended its participation in policy and the political process, including financial contributions.

"Dow maintains and is committed to the highest standard of ethical conduct in all such activity," Sousa said.

Jim Ferraro, a Cleveland-based attorney who successfully litigated against DuPont Co. for distributing a fungicide linked to birth defects, said the companies' denunciation of agency science follows a pattern of discrediting results that could affect their sales. "Over time, these people become desensitized," he said.

White House's Cohn Wants to See `More and More' LNG Terminals

Posted April 21, 2017, 8:04 A.M. ET

By Ryan Collins

If Gary Cohn gets his way, the U.S. could be the biggest exporter of liquefied natural gas in the world.

The director of the White House's National Economic Council—and former Goldman Sachs Group Inc. president—said the administration would step up approvals for LNG export terminals, starting with a project in the Northwest that he didn't identify. At present, Cheniere Energy Inc. is the nation's sole LNG exporter from the lower 48 states.

"We could be and should be the largest exporter of LNG in the world," Cohn said at the Institute of International Finance forum in Washington. "We're going to permit more and more of these LNG plants."

Federal regulators are reviewing about two dozen applications from companies seeking to send America's gas bonanza overseas. That's putting the U.S. on course to become a net exporter of natural gas by 2018, the first time that's happened since the 1950s.

Veresen Inc.'s Jordan Cove LNG export project in Oregon has been denied a permit twice by regulators. After Cohn's comments, shares of the Calgary-based company jumped the most since the beginning of February. The company had no comment on Cohn's remarks, according to Riley Hicks, a spokesman.

—With assistance from Kevin Orland.

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Two U.S. Utility Mergers Squashed in a Week Offer a Lesson

Posted April 21, 2017, 10:41 A.M. ET

By Stephen Cunningham, Mark Chediak and Christopher Martin

There's a lesson to be had from the two multibillion-dollar U.S. utility mergers blocked by state regulators just in the past week: Do not underestimate the power of local government.

"The theme is local control," said Tim Winter, a utilities analyst at Gabelli & Co. Inc.

First, NextEra Energy Inc.'s $18 billion bid to buy Oncor Electric Delivery Co. fell apart when it refused Texas's wish to give an independent group of shareholders some control over budget decisions, among other things. That was followed April 19 by Kansas rejecting Great Plains Energy Inc.'s $8.6 billion plan to take over Westar Energy Inc. The state wanted safeguards, such as an independent Westar board, that the companies said would be a deal-breaker.

It's this state-level desire to preserve local authority that's contributed to what Glenrock Associates analyst Paul Patterson described last week as an expanding "graveyard" of failed utility mergers, underscoring the unique challenges such deals face in this sector alone. The average multibillion-dollar utility deal has taken almost a year to finish, double the time for most other industries—largely because of the time it takes for state regulators to sign off on them.

"The decision highlights how big regulatory risk is to utility mergers," Patterson said. "Every state has their own regulatory DNA, and you saw that in Kansas and Texas."

Be ready to "spend years" closing a utility merger—and be ready to walk away if it gets too expensive, Bloomberg Intelligence analyst Kit Konolige said. "And definitely spend a lot of time with the local folks."

Exelon Corp. had to go before Washington, D.C., regulators three times before gaining their blessing to buy Pepco Holdings Inc. for $6.8 billion last year. It took a residential rate freeze as well as giving the local government discretion to spend $20 million of $78 million in promised customer benefits. If there's anything to learn from that deal, Konolige said, it's that patience and being "willing to raise the stakes enough to get it done" are key.

Is it Over?

"For all we know, it could happen in some of these cases," he said. "It's hard to say it's definitely over until the utilities say it's definitely over."

Indeed, NextEra has plans to revive its bid to buy Oncor, either by challenging Texas's decision or negotiating with some of the state's biggest power users. And after getting rejected by Kansas on Wednesday, Westar noted that it's "not uncommon to have mergers be denied, only to later have them be reconsidered and completed."

"But there is no assurance of that," Westar spokeswoman Jana Dawson went on to say by email.

Westar plunged the most in eight years on Thursday, trading at $50.73 at 12:41 p.m. in New York. Great Plains Energy was up 0.7 percent at $29.71.

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U.K. Heads for First Coal-Free Day Since Industrial Revolution

Posted April 21, 2017, 9:07 A.M. ET

By Anna Hirtenstein and Andrew Reierson

The U.K. is headed for its first full day without burning coal to make electricity since the Industrial Revolution more than a century ago, according to grid operator National Grid Plc.

"Great Britain has never had a continuous 24 hour period without #coal. Today is looking like it could be the first," the National Grid control room's Twitter account posted April 21.

The U.K. was an early adopter of renewable energy and has more offshore wind turbines installed than any other country, as well as fields of solar panels with as much capacity at seven nuclear reactors. The government aims to switch off all coal plants by 2025.

Neighboring countries have similar agendas and energy companies across the continent closing and converting coal-burners at a record pace. Europe's use of the most polluting fossil fuel is drying up quicker than many expected.

"A decade ago, a day without coal would have been unimaginable, and in 10 years' time our energy system will have radically transformed again," Hannah Martin, head of energy at Greenpeace U.K., said in an email.

Action against climate change is the primary reason for the shift to cleaner energy. European Union members have to meet a target to generate 20 percent of their final energy consumption from renewable sources by the end of the decade.

The Paris climate deal agreed in December 2015 brought together almost 200 nations in pledging steps to cut fossil-fuel pollution.

European countries are furthest ahead in greening their power systems. Britain generated more power from the sun than from its coal fleet last July.

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Rainforest Wood Breaches Tokyo Green Olympic Vow, Activists Say

Posted April 21, 2017, 10:59 A.M. ET

By Andy Sharp and Katsuyo Kuwako

Activist groups called for an independent investigation into the use of wood possibly originating from Malaysian forests for the construction of Tokyo's Olympic stadium, saying it is a "significant breach" of the city's commitment to a sustainable 2020 Games.

The seven groups, which include Rainforest Action Network and Friends of the Earth Japan, said in a statement April 20 that tropical plywood being used to mold concrete for the stadium had markings

that appear to belong to Shin Yang, a Malaysian group of businesses. The groups said that Shin Yang is one of the "Big Six" logging companies in Sarawak state on the island of Borneo, a place where they say illegal logging is widespread and the destruction of forests "extreme."

Calls and emails to Gary Tan, the general manager of Shin Yang, were not immediately returned. The company says on its website that it follows practices aimed at protecting the environment and ensuring sustainable forestry.

Shogo Iwatani, a spokesman at the Japan Sport Council, the body responsible for the stadium's construction, said that while it was true that wood from Shin Yang was being used for the formwork, the timber meets sustainability conditions under the organizing committee's standards.

The centerpiece of the Games was selected partly due to its wooden lattice design by renowned architect Kengo Kuma, who is known for his use of natural materials. The Tokyo 2020 organizing committee has a sustainable sourcing code for timber, which states it should be harvested through logging activity that is considerate toward conservation of the ecosystem and the rights of indigenous people. Tokyo Governor Yuriko Koike has said she'll do everything she can to make it a sustainable Olympics.

Series of Scandals

Japan's initial euphoria over its winning bid has faded amid a series of scandals. The original futuristic design for the flagship stadium was scrapped over soaring costs, the logo was changed after accusations of plagiarism, and French prosecutors said last year they were probing a payment made to a Singapore company in connection with the bidding process.

"The national stadium is a building constructed by the national government and should be a place of national pride," Junichi Mishiba, of Friends of the Earth Japan, said in the statement. "We fear this could be a scandal for the Olympics and Japan."

The activists said that the organizing committee has allowed a loophole in its wood procurement policy that exempts formwork plywood used to mold concrete from environmental sustainability and human rights standards.

Taisei Corp., which is leading the construction of the stadium, didn't respond immediately to a request for comment.

Rainforest Action Network senior adviser Hana Heineken said that Japan is the top global importer of tropical plywood.

"The private sector and the government need to recognize that the current model of procuring timber to Japan is completely outdated," Heineken said in an interview April 20 in Tokyo. "They need to do due diligence and check where this timber is coming from."

--With assistance from Choong En Han.

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