Message

From: Mutter, Andrew [mutter.andrew@epa.gov]
Sent: 2/26/2019 10:16:27 PM
To: Benevento, Douglas [benevento.douglas@epa.gov]
Subject: FW: Daily Clips: February 26, 2019

From: D'Andrea, Anthony
Sent: Tuesday, February 26, 2019 3:16:24 PM (UTC-07:00) Mountain Time (US & Canada)
To: AO OPA OMR CLIPS
Subject: Daily Clips: February 26, 2019

Daily Clips
February 26, 2019

Enforcement/House Energy & Commerce Committee Hearing/Oversight

- CNBC: EPA denies being soft on polluters as Democrats question enforcement
- CNN: New report from environmental group details reduced enforcement at EPA
- Bloomberg Environment: Fox News, EPA Collusion Spurs Suit Seeking More Media Records
- Bloomberg Environment: EPA Policy of Asking 'Bad Actors' to Report Their Violations Panned
- Bloomberg Environment: Law Enforcement Claims Disputed by Top EPA Cop at House Hearing
- E&E News: Enforcement chief on claims of 'abysmal record' record: 'Not true'
- E&E News: Video shows security guard shove reporter out of building
- National Law Review: Ninth Circuit Grants Petition for En Banc and Panel Rehearing in Chlorpyrifos Case
- NPR: Will An Appeals Court Make The EPA Ban A Pesticide Linked To Serious Health Risks?
- Reuters: U.S. lawmakers to grill Trump's EPA on enforcement drop-off

Infrastructure

- The Baltimore Sun: EPA issues Baltimore $202 million loan to help repair wastewater system

Fuel

- E&E News: Oil industry counters EPA renewable fuel reform plan
- Oil & Gas Journal: EPA proposes study of possible RFS ethanol quota air quality impacts
- Reuters: Kern Oil threatens to sue EPA over delayed biofuel waiver decision

Air

- Bloomberg Environment: No change to EPA's Sulfur Dioxide Air Quality Standards

Mining

- Bloomberg Environment: EPA Shouldn't Lead Gold King Cleanup, Mining Company Says
- E&E News: Top Democrat wants EPA documents on Minn. Project

Agriculture

- E&E News: Congress passes pesticide reauthorization

Policy

- E&E News: Proposed 'once in' repeal under White House review

Acting Administrator

- The Burlington Record: Benevento: Andrew Wheeler's real record of EPA clean up for Colorado

CNBC

EPA denies being soft on polluters as Democrats questions enforcement

https://www.cnbc.com/2019/02/26/reuters-america-update-1-epa-denies-being-soft-on-polluters-as-democrats-question-enforcement.html

Valerie Volcovici

February 26, 2019

(Adds comments from Bodine, DeGette)

WASHINGTON, Feb 26 (Reuters) - The U.S. Environmental Protection Agency's enforcement chief on Tuesday pushed back on "the myth" that the regulator is soft on polluters as Democratic lawmakers pressed her on the big decline in civil penalties and site inspections last year.

Susan Bodine, assistant administrator of the EPA's Office of Enforcement and Compliance Assurance, testified at a House energy committee panel, where Democratic lawmakers pressed her on significant drops in inspections, penalty collections and referrals of cases to the Department of Justice.

The EPA's annual report https://bit.ly/2Sn0z6h released earlier this month showed it leveled $69 million in civil penalties against polluters and conducted 10,612 site inspections in the 2018 fiscal year, the lowest in at least a decade for both measures.

But Bodine said in her testimony that despite these numbers, EPA is achieving results by encouraging companies to self-report violations and make compliance and enforcement processes more efficient.

"I am pushing back on the myth," she told the panel. "A strong environment program doesn't mean we have to collect a particular dollar amount or pick up a number of penalties."

The hearing comes as Democrats, now in control of Congress after last November's elections, heap scrutiny on the Trump administration over its efforts to unwind environmental regulation to favor business.

Colorado Democratic Congresswoman Diana DeGette, chair of the oversight subcommittee of the energy panel, said the drop-off in major enforcement metrics means pollution will increase.

"I see an agency sitting on its hands, an agency that gives polluters a pass," she said.

House Energy and Commerce Committee Chairman Frank Pallone said the Democrats' first oversight hearing on EPA enforcement questioned Bodine on how low staffing in the agency's compliance division was impacting the agency.

The EPA Office of Enforcement and Compliance Assurance saw a net loss of 131 full-time employees, 17.8 percent of its staff, over the last two years, according to EPA data.

Bodine said she plans to hire more enforcement officials this year.

The Environmental Integrity Project, led by former EPA civil enforcement director Eric Schaeffer, said the decline in enforcement and inspections posed a disproportionate threat to poor communities located near big infrastructure like oil refineries and power plants.

Those cutbacks are leaving communities including those with high poverty levels and African-American or Latino neighborhoods - exposed to public health risks, while letting polluters off the hook for serious violations of the law, Schaeffer said. He will also testify at the hearing on Tuesday.

(Reporting by Valerie Volcovici; Editing by Lisa Shumaker and Marguerita Choy)

CNN
New report from environmental group details reduced enforcement at EPA
https://www-m.cnn.com/2019/02/26/politics/epa-report-enforcement-environmental-integrity-project-eip/index.html?r=https%3A%2F%2Fwww.google.com%2F
Rene Marsh
February 26, 2019

Washington (CNN) — There has been a drastic drop in the enforcement of environmental regulations by the Environmental Protection Agency under the Trump administration, an advocacy group will say in a report issued to Congress on Tuesday.

The Environmental Integrity Project said it had analyzed years of federal data and found declines in inspections, polluters charged with crimes, civil penalties, pollution reductions and EPA enforcement staffing.

The group said in its new report that it had "compared the federal data from last year to two decades of past EPA reports as well as federal court records and other documents, to reach several conclusions."

EPA conducted fewer inspections for environmental violations last year (10,612 inspections), "less than 60% of the annual average since 2001," the report states.

The report also said that while the agency sends the worst environmental polluters to the US Justice Department for civil prosecution, President Donald Trump's EPA does so less frequently than previous years: "EPA sent 123 such cases to the Justice Department in fiscal year 2018, up slightly from 2017, but far below the annual average of 304 cases during the George W. Bush Administration and 211 during the Obama years."

Likewise, the report says there has been a decrease in criminal prosecution referrals. According to the environmental watchdog's analysis, EPA opened 129 criminal cases in 2018, about one-third of the levels reported between 2008 and 2013.
The number of new criminal cases has declined sharply since 2013, the start of the second term of the Obama administration, the report states.

Asked for comment, EPA spokesperson James Hewitt said, "EPA cannot fairly review or verify any of the findings in the EIP's embargoed report and cannot comment on the status of current enforcement cases. The Agency is committed to the vigorous enforcement of our nation's environmental laws and inaccurate suggestions to the contrary only embolden noncompliance with the law. EPA enforcement is developing new initiatives to protect rivers and waters from unlawful pollution, to protect sources of drinking water, and to reduce the exposure of our most vulnerable populations to lead. Year-end enforcement metrics are inherently variable and are based on the facts and circumstances of the cases pursued in a year by our dedicated career staff."

"EPA's enforcement workforce has been shrinking for years, but the Trump administration wants to cut it back even further," said Eric Schaeffer, a former director of civil enforcement at EPA who's now the executive director of the Environmental Integrity Project. "Those cutbacks are leaving communities -- including those with high poverty levels and

African-American or Latino neighborhoods -- exposed to public health risks, while letting polluters off the hook for serious violations of the law."

According to the group, EPA estimates that violators will spend $3.95 billion to comply with enforcement actions in 2018, the lowest amount since 2003, after adjusting for inflation.

These funds would typically be spent on things like equipment to curb pollution.

Due to years of budget cuts, the agency has also seen a decrease in its enforcement workforce. According to the Environmental Integrity Project's analysis, the agency had 1,842 full-time equivalent staff last year, a 16% decrease from 2006. The number is expected to drop further in 2019, the report says.

Schaeffer will testify before a House Energy and Commerce subcommittee Tuesday. EPA's assistant administrator in the office of enforcement and compliance assurance, Susan Bodine, will be on the hot seat facing questions about the agency's enforcement practices under the Trump administration.

At EPA Administrator nominee Andrew Wheeler's Senate confirmation hearing in January, he was asked about the decline in enforcement at EPA under the Trump administration.

At the time, Wheeler, the acting EPA administrator said, "We are working very hard on compliance assurance. I think the agency has for a number of years. I think the more compliance assurance that we have, the fewer enforcement actions that we need to take."

Wheeler told lawmakers that reports suggesting EPA's enforcement is declining are misleading.

Bloomberg Environment
Fox News, EPA Collusion Spurs Suit Seeking More Media Records
https://news.bloombergenvironment.com/environment-and-energy/fox-news-epa-collusion-spurs-suit-seeking-more-media-records
Daniel Seiden
February 26, 2019

- FOIA suit filed by Democracy Forward Foundation
- Info on U.S. connections to Fox, Breitbart, Sinclair sought

The U.S. State Department and three other federal agencies must produce records showing whether they have communicated with nine media outlets, including Fox News and Breitbart News, Democracy Forward Foundation said in a complaint.

The agencies' failure to respond to Democracy Forward Foundation's requests for information violates the Freedom of Information Act, the non-profit organization told the U.S. District Court for the District of Columbia Feb. 25.

Democracy Forward Foundation describes itself as an organization that "works to promote transparency and accountability in government, in part, by educating the public on government actions and policies."

A report in November 2018 by The Daily Beast said a Fox & Friends news anchor read a script bolstering the Trump Administration's policy agenda that the Environmental Protection Agency expressly approved, the complaint says.

These actions raised concerns about possible violations of a propaganda prohibition. Democracy Forward Foundation submitted FOIA requests to determine how widespread these practices are, the complaint says.

The State Department, Treasury Department, the Department of Homeland Security, and the Small Business Administration have failed to respond sufficiently to information requests, the complaint says.

The requests sought all records containing or documenting communications between Fox News, Breitbart News Network, CRTV.com, The Blaze, NewsMax, Daily Caller, Daily Wire, One America News, and Sinclair Broadcast Group.

The case is Democracy Forward Found. v. U.S. Dep't of State, D.D.C., No. 19-459, complaint 2/25/19.

Bloomberg Environment
EPA Policy of Asking 'Bad Actors' to Report Their Violations Panned
https://news.bloombergenvironment.com/environment-and-energy/epa-policy-of-asking-bad-actors-to-report-their-violations-panned
Amena H. Saiyid
February 26, 2019

- EPA defends self-auditing policy, saying more companies are coming forward
- Rep. Pallone questions whether "worst offenders" will disclose violations

The EPA's efforts to get companies to disclose violations voluntarily came under fire from the chairman of the House Energy and Commerce Committee at a hearing on Feb. 26.

"Nobody here can really believe that the worst offenders of environmental laws would voluntarily come forward to disclose their violations," Rep. Frank Pallone (D-N.J.), told Susan Bodine, EPA assistant administrator for enforcement and compliance assurance, at a hearing on the agency's enforcement record.

Bodine defended the Environmental Protection Agency's policy of self-disclosure and said that it would take action against a company that failed to disclose violations.

Self-disclosure isn't a shield against enforcement, Bodine said. "There will be inspections."

Her answer didn't satisfy Pallone, who asked what incentive the EPA offered. After all, "it is human nature that bad actors don't say they are bad," he said.

Bodine said that companies that self-disclose violations in their entirety would be absolved of penalties.

'Carrot and Stick'

Rep. Greg Walden (R-Ore.), the committee's ranking Republican, said the EPA was using a "carrot and stick" approach rather than letting bad actors off the hook.

Walden noted that the EPA in fiscal year 2018 saw a 47 percent increase in facilities self-disclosing violations over the prior year, with 532 plants at more than 1,500 facilities voluntarily disclosing violations due to this self-disclosure policy. "The dramatic increase in these self-reports is a good thing, demonstrating that business owners are trying to comply with the complex laws and regulations enforced by the EPA," Walden said.

The number of inspections and evaluations conducted by the EPA declined to 10,612 in 2018 from 11,941 the previous year. The number has been declining since 2012.

Self-Audit Policy Changes for Oil and Gas

In the oil and gas industry specifically, the EPA also is moving forward with reforms to its decade-old self-auditing policy to make it more efficient. In May 2018, it proposed changes to its self-auditing policy that would allow oil and gas companies that acquire multiple new drilling sites to have more time to identify and fix leaking storage tanks.

These changes would target the widespread problem of storage tanks located at drilling sites that are leaking volatile organic compounds because of poor vapor controls.

The self-auditing policy proposal for oil and gas companies, which was issued in draft form in May 2018 and is expected any day, isn't designed to replace formal enforcement actions, according to the EPA. Instead it is meant to foster compliance among companies that agree to fix problems that cause environmental violations.

Bloomberg Environment
Law Enforcement Claims Disputed by Top EPA Cop at House Hearing
https://news.bloombergenvironment.com/environment-and-energy/lax-enforcement-claims-disputed-by-top-epa-cop-at-house-hearing
Amena H. Saiyid
February 26, 2019

- Penalty numbers don't show the full picture of compliance, Bodine says
- EPA looks at settlements that bring most facilities back into compliance

The EPA's top enforcement officer pushed back Feb. 26 against claims that the agency has become lax at enforcing environmental laws.

"I am pushing back on the myth," Susan Bodine, EPA assistant administrator for enforcement and compliance assurance, told the House Energy and Commerce Subcommittee on Oversight and Investigations. "A strong environment program doesn't mean we have to collect a particular dollar amount."

Bodine defended the Environmental Protection Agency's fiscal year 2018 enforcement record, which showed the number of inspections and evaluations conducted by the agency declined to 10,612 in 2018 from 11,941 the previous year. The number has been declining since 2012.

Penalties Down
The EPA data showed in fiscal year 2018 it collected $69.5 million in civil penalties, which the nonprofit Environmental Integrity Project in a Feb. 26 report claimed is the lowest in both actual and inflation-adjusted dollars since at least 1994. However, fines collected may not be the best metric to judge the EPA's performance, Bodine said. The EPA has many tools for bringing compliance with environmental laws, including working with companies to voluntarily disclose violations and working with states to take enforcement actions, she said.

"Don't judge the EPA by a narrow set of parameters," Bodine said. "We look for opportunities to maximize the impact of our cases so that a single settlement returns multiple facilities into compliance."

She pointed to the 2017 Clean Air Act settlement reached with Harcros Chemicals that required the company to audit its risk management plans in 28 facilities across 18 states to prevent accidental releases of chemicals.
Bodine in particular took umbrage to Rep. Diana DeGette (D-Colo.), chairwoman of the oversight panel, who said the "agency is now sitting on its hands, an agency that gives polluters a pass."

DeGette, however, got Bodine to acknowledge that the number of inspections carried out by the EPA in fiscal year 2018 was the lowest in a decade and that the number of cases referred to the Justice Department dropped as well.

E&E News
Enforcement chief on claims of 'abysmal' record: 'Not true'
https://www.eenews.net/greenwire/2019/02/26/stories/1060122457
Sean Reilly
February 26, 2019
EPA enforcement chief Susan Bodine doggedly defended her office's record this morning against a drumbeat of questions from Democrats over data showing a decline in fines and staffing.

"Some are judging our work based on a narrow set of parameters and then drawing the conclusion that EPA is somehow soft on environmental violators," Bodine told lawmakers at a House Energy and Commerce Subcommittee on Oversight and Investigations hearing. "I'm here to tell you that is absolutely not true."

In written testimony, Bodine touted a variety of initiatives by the Office of Enforcement and Compliance Assurance, such as "reinvigorating" its self-audit program and a separate effort to complete inspection reports faster "so that facilities can be made aware of potential compliance problems more quickly and address them." Among OECA's accomplishments in fiscal 2018, Bodine singled out a corporation's guilty plea for illegally transporting 9 million pounds of hazardous waste from Mississippi to an unpermitted facility in Missouri.

But as E&C Chairman Frank Pallone (D-N.J.) labeled the Trump administration's enforcement record "abysmal," Bodine did not dispute that the approximately $69.5 million in civil and administrative penalties collected last year was the lowest total in almost a quarter-century. Pressed by Rep. Kathy Castor (D-Fla.) over indications that the number of civil cases initiated last year may have been the lowest since 1982, Bodine replied, "That is a narrow slice of the work we do."Bodine, a former congressional staffer, has headed OECA since December 2017. Today's hearing marked her first appearance before Congress in that role.

Backing her were E&C Republicans, who cautioned against attaching too much significance to one year's worth of enforcement data.

"While there is a downward trend with some of these figures over the course of multiple administrations, some figures fluctuate drastically year to year," ranking member Greg Walden (R-Ore.) said in his prepared opening statement.
As Bodine concluded her testimony shortly before 12:30 p.m., the subcommittee was scheduled to hear from a second panel of witnesses that included former EPA enforcement officials and a past head of the Justice Department's Environment and Natural Resources Division.

E&E News
Video shows security guard shove reporter out of building
https://www.eenews.net/greenwire/2019/02/26/stories/1060122461
Timothy Cama and Kevin Bogardus
February 26, 2019

Security footage shows an EPA security guard push an Associated Press reporter out of the agency's headquarters last year.

The video, obtained by E&E News under the Freedom of Information Act, shows AP reporter Ellen Knickmeyer inside the William Jefferson Clinton Federal Building for roughly five minutes on May 22, 2018, before a female guard pushes her out with two hands on her shoulders.

Knickmeyer was trying that morning to cover then-Administrator Scott Pruitt's high-profile summit on the agency's plans to confront PFAS — for per- or polyfluoroalkyl — chemicals found in drinking water.

But Knickmeyer wasn't part of a small group of journalists EPA invited for a select portion of the event. E&E News and CNN reporters also went to the building that morning and were barred from entering. EPA claimed at the time the agency had enough room at the summit to accommodate only 10 news outlets.

Asked for comment on the video, an AP spokeswoman confirmed to E&E News that Knickmeyer is in the video and referred to the newswire's story on the day's events. AP Executive Editor Sally Buzbee said at the time EPA's selective blocking of certain news organizations from covering the summit was "a direct threat to the public's right to know about what is happening inside their government."

Later, after the treatment of the reporters gained widespread attention, EPA opened up the afternoon session of the summit that day to all members of the press (Greenwire, May 22, 2018). In addition, the AP said Lincoln Ferguson, then

an adviser to Pruitt at EPA, called Knickmeyer to apologize for how she was treated and said the incident was being looked into. It is not clear if any disciplinary action has been taken against the guard.

An EPA spokesman didn't respond to a request for comment but referred E&E News to the General Services Administration since agency headquarters is a GSA building.

A GSA spokeswoman referred E&E News to the Department of Homeland Security since security at EPA sites falls under the department's Federal Protective Service. DHS didn't immediately answer questions for this story.

In the grainy security video — which has been partially blurred, hiding the faces of most people entering the south entrance to the Clinton building — Knickmeyer is shown entering the building and immediately speaking with a security guard posted there. The video has no audio.

She initially gives the guard an identification badge, which she gets back shortly after. A man who isn't a guard shows her something on his tablet while she is trying to deal with the guards, and she makes a call.

The guards appear to argue with Knickmeyer at multiple points, and they gesture for her to leave the building. At one point, three security guards are speaking with her.

Near the end of the video, a guard points toward the door while talking to Knickmeyer. The guard then gets very close to Knickmeyer, keeps talking to her and pushes her out of the building, with both of the guard's hands on the reporter's shoulders.

A few seconds later, the guard returns to the building. Another security guard is shown smiling before the video ends.

At the time, the agency defended its handling of the incident.

"The Associated Press was told we were at capacity and a livestream would be available," then-EPA spokesman Jahan Wilcox said in a statement (E&E News PM, May 23, 2018).

"The AP reporter showed up at EPA but refused to leave the building after being asked to do so. When we were made aware of the incident, we displaced stakeholders to the overflow room who flew to Washington for this meeting so that every member of the press could have a seat."

National Law Review
Ninth Circuit Grants Petition for En Banc and Panel Rehearing in Chlorpyrifos Case
https://www.natlawreview.com/article/ninth-circuit-grants-petition-en-banc-and-panel-rehearing-chlorpyrifos-case
Lisa M. Campbell & Lis R. Burchi
February 26, 2019

On February 6, 2019, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) issued an order granting the U.S. Environmental Protection Agency's (EPA) and Acting EPA Administrator Andrew Wheeler's (collectively EPA or Respondents) September 24, 2018, petition for an en banc rehearing concerning the Ninth Circuit's August 9, 2018, decision that vacated an EPA order maintaining chlorpyrifos registrations and remanded the case to EPA with directions to revoke all tolerances and cancel all registrations for chlorpyrifos within 60 days.

The Ninth Circuit's order granting the Respondent's petition that the case be re-heard en banc does not provide an explanation for its decision. The Ninth Circuit evidently found the arguments offered by Respondents and other interested parties that filed amicus curiae briefs more persuasive than Petitioners' brief (including the Pesticide Action Network North America (PANNA) and the Natural Resources Defense Council (NRDC)), who argued against submission of certain amicus curiae briefs and also that, with limited exception, Respondent's petition for rehearing lacked merit and should be denied.

The en banc oral argument will be held March 26, 2019, at 2:30 p.m. (PST).

Arguments for Rehearing

Prior to the February 6, 2019, order, on October 15, 2018, three amicus curiae briefs were filed in support of EPA's petition by CropLife America (CLA), Agribusiness Council of Indiana (Agribusiness), and Dow Agrosciences LLC (DAS). Despite Petitioners' objection to the motions of Agribusiness and CLA for leave to file amicus curiae briefs in support of Respondent's petition for rehearing, on November 13, 2018, the Ninth Circuit granted the motions for leave to file amicus curiae briefs.

EPA's petition for rehearing made multiple arguments as to why an en banc and panel rehearing should be granted, including the Panel's lack of jurisdiction, the Panel's order conflicting with applicable Supreme Court precedent, and specific modifications to be addressed to the order to comply with Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) requirements. More information regarding EPA's petition is available in our blog item "EPA Petitions for En Banc and Panel Rehearing in Ninth Circuit Chlorpyrifos Case."

The amicus curiae briefs supported EPA's arguments and also made arguments supporting rehearing in addition to those previously set forth by EPA. CLA's brief focused on the fact that the Panel's decision disregarded FIFRA's cancellation process, stating: "if EPA ultimately were to determine that any chlorpyrifos registration would need to be cancelled, such an action could not be accomplished in the way the panel majority prescribed: by circumventing the procedures Congress required to ensure that pesticide cancellation decisions are not made unless and until these harms and the best science available are properly vetted." DAS' brief addressed in detail the Panel's violation of administrative law in dictating how EPA must act (i.e., cancel the chlorpyrifos registrations) and the potential violation of FIFRA by EPA if forced to comply with the Panel's order regarding the timing for cancelling such registrations. The amicus curiae briefs also sought to provide information on the practical consequences that chlorpyrifos registrants and users would face if the panel opinion is not revised. For example, DAS discussed its proprietary interest in protecting its registrations and defending its product, while Agribusiness in its brief provided some background on the use and benefits of chlorpyrifos, the lack of viable alternatives, and the ramifications of the order on insect pest resistance and the ability to combat new invasive pests.

Petitioners' response to the petition for rehearing and rehearing en banc argued that there was no basis for rehearing. Petitioners noted that en banc review is "disfavored" and appropriate in limited "extraordinary circumstances" and in the face of "an irreconcilable conflict between the holdings of controlling prior decisions of this court." Petitioners argued that the Panel decision was in accord with precedent and that a request for rehearing "would only result in further delay." Petitioners did concede on two points: (1) modifying the order to direct EPA to cancel the registrations under the FIFRA cancellation process, which necessitates more time than the 60 days set forth in the order; and (2) clarifying that the order is limited to cancelling registrations that can result in residues on food.

EPA, chlorpyrifos registrants and users, and industry generally should be encouraged by the decision to grant an en banc rehearing in this case, but the outcome is far from certain. Given the issues at stake, registrants should monitor this hearing closely.

NPR
Will An Appeals Court Make the EPA Ban A Pesticide Linked To Serious Health Risks?
https://www.npr.org/sections/thesalt/2019/02/26/698227414/will-an-appeals-court-make-the-epa-ban-a-pesticide-linked-to-serious-health-risk
Eilis O'Neill
February 26, 2019

Eric Perez and his wife, Mari, live with their five children in the Wenatchee Valley, in central Washington state. Their house is just feet from an orchard. A couple years ago, the kids were having an Easter egg hunt in the yard when they smelled something "plasticky," Perez remembers — like "rotten eggs."

Perez says they realized the orchard must have been sprayed while the family was away for their Easter lunch.

Perez says they got stomachaches, started throwing up and having trouble breathing, and got diarrhea and scratchy throats.

"I think we all went to the doctor," he remembers.

Washington's Department of Agriculture investigated and found evidence that a pesticide called chlorpyrifos had drifted onto the Perez property from the neighboring orchard.

Crops like apples, corn, soybeans, and Christmas trees are all sprayed with chlorpyrifos. The Environmental Protection Agency decided to phase the popular pesticide out of household use back in 2000, but it's still allowed in agriculture. Now, the Ninth Circuit Court of Appeals will decide whether or not the EPA has to ban it.

When chlorpyrifos drifts onto farmworkers and rural residents, the immediate symptoms can include "nausea, vomiting, diarrhea, abdominal cramps, muscle weakness, muscle twitching, coughing, wheezing," says Richard Fenske, a University of Washington professor who's studied the chemical.

For babies and children, the pesticide can be even more dangerous.

"There are developmental effects in children and in the fetus during pregnancy," he says. "We may see slower learning, not making progress in school as quickly as other students."

Specifically, children with more chlorpyrifos in their blood at birth and in early childhood scored lower on memory, verbal comprehension, and reasoning tests. They also had lower IQs and higher rates of ADHD and impulsive behavior than children exposed to less chlorpyrifos.

EPA scientists recommended a total ban on the chemical. But in March 2017, President Donald Trump's new EPA administrator at the time, Scott Pruitt, decided against that.

A group of environmental and farmworkers' organizations who want a total ban sued the EPA. Last August, a three-judge panel ruled 2-1 that the EPA had to ban chlorpyrifos. But the EPA appealed that decision, and, now, the full Ninth Circuit Court is reconsidering the ruling.

Farmers applaud that decision, saying they need chlorpyrifos.

Sean Gilbert is a fifth-generation farmer in Yakima, Washington. He grows apples and other tree fruit. He says he sometimes uses chlorpyrifos in his orchards.

"It will primarily go after a pest called scale," Gilbert says. "Scale irritates the skin of the apple and creates bright red spots on it. It would look like it had the measles."

"Scale, in particular, if left unchecked can kill your tree," says Betsy Beers, an entomologist at Washington State University who studies pest management. "So it is something that growers have to take very seriously."

Not just apple growers use chlorpyrifos. Christmas tree farmers also depend on the chemical; they use it to kill aphids, which can leave trees black, gnarled, and pretty much unsellable.

Beers says there are alternatives to chlorpyrifos, but they're more expensive.

"We can't count on there being an effective replacement coming anytime soon," she says.

It's unclear how much chlorpyrifos residue remains on fruit and Christmas trees when they reach consumers. One study found chlorpyrifos derivatives in the urine of kids who eat produce that is not labeled organic. But there's no evidence linking that level of exposure to actual harm.

In the Wenatchee Valley, Eric Perez got tired of the pesticide blowing over onto his house.

"I saw my kids go to the doctor so many times," he says. "I failed them as a parent."

He wishes he had said or done more, sooner, to keep the chemical away from his family.

A year and a half ago, in September 2017, he bought the orchard next to his house. Now, it's farmed organically.

The Ninth Circuit Court is scheduled to hear oral arguments in the case against the EPA on March 25.

Reuters
U.S. lawmakers to grill Trump's EPA on enforcement drop-off
https://www.reuters.com/article/us-usa-epa-enforcement/u-s-lawmakers-to-grill-trumps-epa-on-enforcement-drop-off-idUSKCN1QF185
Valerie Volcovici
February 26, 2019

WASHINGTON (Reuters) - U.S. lawmakers will grill the Environmental Protection Agency's top pollution enforcement official on Tuesday after the agency's recent annual report showed a big decline in civil penalties and site inspections.

FILE PHOTO: The U.S. Environmental Protection Agency (EPA) sign is seen on the podium at EPA headquarters in Washington, U.S., July 11, 2018. REUTERS/Ting Shen/File Photo/File Photo

The hearing comes as Democrats, now in control of Congress after last November's elections, heap scrutiny on the Trump administration over its efforts to unwind environmental regulation to favor business.

The EPA's annual report bit.ly/2Sn0z6h released earlier this month showed it leveled $69 million in civil penalties against polluters and conducted 10,612 site inspections in the 2018 fiscal year, the lowest in at least a decade for both measures.
House Energy and Commerce Committee Chairman Frank Pallone said the Democrats' first oversight hearing on EPA enforcement will focus on how low staffing in the agency's compliance division was impacting the agency.

"The problem is the Trump administration has actually diminished the number of staff people that work at EPA that do enforcement, and this results in less protection of people's health and safety and less protection of the environment," Pallone said in a video announcing the hearing.

The EPA Office of Enforcement and Compliance Assurance saw a net loss of 131 full-time employees, 17.8 percent of its staff, over the last two years, according to EPA data.

Susan Bodine, assistant administrator of the EPA's Office of Enforcement and Compliance Assurance, said last month that EPA was using "all the tools at its disposal" to deter misconduct by polluters. She will testify at Tuesday's hearing.
Judge green lights Trump ban on bump stocks

An EPA official did not provide further comment.

The Environmental Integrity Project, led by former EPA civil enforcement director Eric Schaeffer, said the decline in enforcement and inspections posed a disproportionate threat to poor communities located near big infrastructure like refineries and power plants.

"Those cutbacks are leaving communities – including those with high poverty levels and African-American or Latino neighborhoods - exposed to public health risks, while letting polluters off the hook for serious violations of the law," Schaeffer said. He will also testify at the hearing on Tuesday.

The Baltimore Sun
EPA issues Baltimore $202 million loan to help repair wastewater system
https://www.baltimoresun.com/news/maryland/environment/bs-md-ci-epa-loan-20190225-story.html
Lillian Reed
February 26, 2019

Baltimore is set to receive a federal loan of about $202 million from the U.S. Environmental Protection Agency to help the city make system-wide upgrades to its aging wastewater infrastructure.

The loan will help offset about 20 percent of an estimated $942 million cost to the city to make the upgrades, according to a Baltimore Department of Public Works news release Monday.

Baltimore's wastewater and stormwater infrastructure is in poor condition. City officials have been working to secure the federal loan since 2017, shortly after the issuance of a $1.2 billion consent decree requiring the city to finish key repairs to wastewater and stormwater systems by 2021 and to develop a plan to complete the rest of the work by the end of 2030.

The city's sewage system is more than 100 years old and was designed to discharge wastewater directly into area waterways when it becomes overloaded, a key reason water quality is poor in the Inner Harbor, Jones and Gwynns falls and the Patapsco and Back rivers. Cracked and broken pipes allow sewage to routinely flow into city waterways. When it rains, stormwater inundates the system, sometimes washing millions of gallons of water contaminated with untreated sewage into waterways.

With the EPA's loan, Baltimore officials plan to complete 14 projects, including a series of repairs and upgrades across its large wastewater conveyance system, completion of upgrades to the Back River Wastewater Treatment Plant, and improvements to its stormwater management system, the release states.

The Maryland Department of the Environment has also pledged to finance about $328 million toward similar wastewater and stormwater infrastructure improvements, according to the release.

The EPA loan comes from the Water Infrastructure Finance and Innovation Act of 2014, which aims to accelerate investment in the nation's water infrastructure by providing long-term, low-cost supplemental credit assistance for regionally and nationally significant projects, according to the release.
Baltimore's wastewater repairs and six other projects nationwide were selected to receive the EPA loan, out of a total of 39 projects invited to apply.

E&E News
Oil industry counters EPA renewable fuel plan
https://www.eenews.net/greenwire/2019/02/26/stories/1060122447
Marc Heller
February 26, 2019

Changes EPA is considering for renewable fuel credits could only worsen flaws in the nation's biofuel mandate, a lobbying group for the petroleum industry said today.

The American Petroleum Institute said a study it commissioned suggests that tinkering with the system of Renewable Identification Numbers, or RINs, isn't necessary and could increase fuel costs.

"RIN reform does nothing to solve the fundamental problem," said Frank Macchiarola, vice president of downstream and industry operations for the API, on a conference call with reporters.

To API, the fatal flaw in the renewable fuel standard is the rising volumes of ethanol the government requires to be added to the nation's fuel supply. The requirement compels refiners to either blend biofuel or buy the credits to show compliance, sometimes at costs they say are exorbitant.

API said its analysis shows that refined product prices already reflect the cost of renewable fuel credits, reinforcing an earlier finding by EPA.

The agency, however, is crafting regulations that could pave the way to changes in the RIN system, as well as expanding availability of fuel that contains 15 percent ethanol. The RIN changes under consideration include limiting participation in the RIN market to companies that actually have to meet the RFS requirements and requiring public disclosure when an individual holds a number of RINs above a certain limit.

Macchiarola said EPA's direction is misguided.

"In fact, reforming the RINs market will exacerbate the already broken fuels mandate — the Renewable Fuels Standard (RFS) — which is costly and unnecessary for U.S. consumers," Macchiarola said in a news release.

In proposing changes to RINs, EPA has said it's responding to industry complaints about lack of transparency. That's also been a complaint from the ethanol industry, but API said EPA has already taken good steps toward addressing that issue by establishing an online database of RIN prices, for instance, and by stepping up the fight against RIN fraud.

EPA has said it will propose both the RIN changes and the E15 regulations together, in time for E15 sales this summer. The API opposes both elements, while ethanol groups have urged the agency to concentrate on E15 and leave RIN reform for a separate measure.

Oil & Gas Journal
EPA proposes study of possible RFS ethanol quota air quality impacts
https://www.ogj.com/articles/2019/02/epa-proposes-study-of-possible-rfs-ethanol-quota-air-quality-impacts.html
Nick Snow
February 26, 2019
The US Environmental Protection Agency has proposed a study of whether ethanol volume quotas under the Renewable Fuel Standard are having adverse air quality impacts. The so-called anti-backsliding study, which is part of a proposed consent decree

that would partially settle an Oct. 20, 2017, Sierra Club lawsuit alleging EPA did not meet Clean Air Act requirements before implementing the RFS, would be completed by Mar. 30, 2020.

“In addition, within three months of completing the anti-backsliding study, if the parties cannot reach an agreement on a deadline for the follow-up action, they will promptly submit a joint motion (or, if the parties are unable to agree, separate motions) to govern further proceedings,” EPA said. It will accept comments on the proposal through Mar. 25, 2019.

The lawsuit said that EPA did not conduct the discretionary study and failed to report to Congress whether vehicle and engine air pollutant emissions changes resulting from the RFS program's renewable fuel volumes have adverse air quality impacts, the agency indicated.

It said the legal action also alleges EPA did not promulgate fuel regulations that implement appropriate measures to mitigate any such adverse impacts or determine whether such regulations were not necessary.

Reuters

Kern Oil threatens to sue EPA over delayed biofuel waiver decision
https://www.reuters.com/article/us-usa-epa-biofuels/kern-oil-threatens-to-sue-epa-over-delayed-biofuel-waiver-decision-idUSKCN1QF1QB
Humeyra Pamuk
February 26, 2019

WASHINGTON (Reuters) - Kern Oil & Refining Co. has threatened to sue the U.S. Environmental Protection Agency for failing to respond to its request for a small refinery biofuel waiver within the proscribed 90 days, according to a letter seen by Reuters on Tuesday.
"Kern Oil would prefer to resolve this matter and receive a response...without the need for litigation," the company said in the letter addressed to EPA Acting Administrator Andrew Wheeler and dated Feb. 7. "If EPA does not, however, Kern Oil intends to sue you and EPA in U.S. District Court..."

Update
(Adds detail from letter, background)
WASHINGTON, Feb 26 (Reuters) - Kern Oil & Refining Co. has threatened to sue the U.S. Environmental Protection Agency for failing to respond to its request for a small refinery biofuel waiver within the proscribed 90 days, according to a letter seen by Reuters on Tuesday.

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An EPA official did not immediately respond to a request for comment.

Kern, a privately-owned California company, said in the letter that it had applied for a waiver on July 19, 2018 that would have excused it from complying with its 2017 obligations under the U.S. Renewable Fuel Standard.

Under the RFS, oil refiners must blend certain volumes of biofuels like corn-based ethanol into their fuel each year or purchase blending credits from those that do. But small oil refineries can be exempted from the standard if they prove that compliance would cause disproportionate hardship.
Under the RFS, EPA has 90 days to respond to requests for such waivers.

The Trump administration had initiated a review of the scoring system it uses to evaluate waiver applications, sources familiar with the matter told Reuters late last year. But EPA officials have said the agency would continue meeting its obligation to process waiver requests on time.

The status of the scoring system review was not immediately clear.

The waiver program has become a lightning rod of controversy between the rival oil and corn industries since the EPA vastly increased the number of waivers to help the refining industry since President Donald Trump took office.
(Reporting by Humeyra Pamuk; Writing by Richard Valdmanis Editing by Susan Thomas)

Bloomberg Environment
No Change to EPA's Sulfur Dioxide Air Quality Standard
https://news.bloombergenvironment.com/environment-and-energy/no-change-to-epas-sulfur-dioxide-air-quality-standard
Amena H. Saiyid
February 26, 2019

- EPA and its science advisers see no reason to change the standard
- EPA cites drastic decline in air emissions of sulfur dioxide to back its decision

Power plants and other industries won't need to install any additional controls for sulfur dioxide pollution as the EPA plans to retain the national air quality standard set in 2010.

The Environmental Protection Agency announced Feb. 26 it will keep the air quality standard for sulfur dioxide at the 75 parts per billion level recommended by the Clean Air Scientific Advisory Committee in April 2018.

The Clean Air Act requires the EPA to review national air quality every five years, but it rarely meets that schedule.

"Based on review of the scientific literature, recommendation from our independent science advisors, and public comment, we have concluded that the existing standard continues to provide adequate health protection to our most vulnerable populations," Bill Wehrum, head of the EPA's air pollution office, said in a Feb. 26 statement.

A more stringent standard could have required states to impose new pollution control measures on industries and vehicles. Breathing sulfur dioxide can harm the respiratory system and aggravate asthma.

Wehrum said U.S. emissions of sulfur dioxide have shown dramatic declines owing to federal and state regulations. In fact, sulfur dioxide levels have dropped by more than 85 percent between 1990 and 2017 and more than 60 percent since 2010.

Compared with 2017, EPA data showed that sulfur dioxide emissions from power plants dropped 6 percent to 1.26 million tons.

Bloomberg Environment
EPA Shouldn't Lead Gold King Cleanup, Mining Company Says
https://news.bloombergenvironment.com/environment-and-energy/epa-shouldnt-lead-gold-king-cleanup-mining-company-says
Tripp Baltz
February 26, 2019

- EPA caused the spill and should be removed as lead agency at site, company says
- Sunnyside Gold Corp. says EPA has conflict of interest

The EPA shouldn't be the lead agency at Colorado's Gold King Mine Superfund site since it caused the August 2015 spill leading to the contamination, one of the companies involved in the cleanup said.

The mining company, Sunnyside Gold Corp. of Denver, said the Environmental Protection Agency has a clear conflict of interest and asked its inspector general to investigate whether it should be recused from work at the Bonita Peak Superfund site.

The agency is a defendant in multiple actions related to the accident that unleashed 3 million gallons of mining waste into a nearby river and is unable to act impartially, the company said in a Feb. 25 letter to Charles Sheehan, the acting inspector general.

The company accused the agency of tying up mitigation work with endless studies and said it hasn't run its water treatment plant at the site to full capacity. This has allowed hundreds of gallons of acidic metals-laden water to travel around the plant directly into Cement Creek, the Animas River tributary affected by the spill, Kevin Roach, Sunnyside Gold's director of reclamation operations, said in the letter.

The spill occurred when EPA workers digging near the entrance of the abandoned mine accidentally caused the mining wastewater and sediment to gush into Cement Creek, which flows into the Animas River, whose water ultimately flows into the Colorado River, the drinking water supply for about 40 million people in the Southwestern U.S.

The plume of waste flowed through Indian lands and three states before emptying into Lake Powell near the Four Corners Region.

Groundwater Investigation
In March 2018, the EPA ordered Sunnyside—which mined at the site from 1986 to 1991—to investigate how various underground workings between Gold King Mine and Sunnyside Mine are connected hydrologically and to measure surface water impacts from the groundwater system. The findings could reveal who is responsible for creating the wastewater the EPA released.

Roach said the EPA has wrongfully targeted Sunnyside, requiring the company to engage in millions of dollars of investigatory work at the site.

"EPA's application of Superfund as a weapon against SGC is an abuse of power and contradicts the purpose of Superfund, which was enacted to 'ensure that the costs of such cleanup efforts were borne by those responsible for the contamination,'" the company said, citing the 2009 case Burlington Northern v. United States (556 U.S. 599, 602).

At some point the company will be entitled to recover money it spends on the investigation from the federal government, Roach said, but for now it's being irreparably harmed by the EPA's actions as the lead agency.

An EPA spokeswoman and the EPA project manager and team lead for Bonita Peak did not return Bloomberg Environment's request for comment.

E&E News
Top Democrat wants EPA documents on Minn. Project
https://www.eenews.net/eedaily/2019/02/26/stories/1060122409
Manuel Quiñones
February 26, 2019

Minnesota Democratic Rep. Betty McCollum wants EPA to turn over documents related to the PolyMet Mining Corp. copper-nickel mining project in her state.

Specifically, McCollum, who leads the Appropriations subcommittee with jurisdiction over EPA, wants comments from staff on the venture.

"Sulfide-ore mining has the potential to significantly impact water quality, which is why such an extensive and public permitting process exists," she wrote acting Administrator Andrew Wheeler. "If the qualified, expert EPA scientists and professional staff prepared comments outlining any concerns regarding these permits, then the American people have the right to know."

Democrats have asked for documents before, and watchdog groups this month sued EPA for failing to turn over more information (Greenwire, Feb. 19).

E&E News
Congress passes pesticide reauthorization
https://www.eenews.net/eedaily/stories/1060122407/search?keyword=epa
Marc Heller
February 26, 2019

A three-year renewal of a law that governs pesticide registrations passed the House last night, the last hurdle needed before being signed into law.

The House passed the reauthorization of the Pesticide Registration Improvement Act, S. 483, by unanimous consent, putting a quiet ending on a bill that had become tied up in debates over pesticide worker safety and potential human health threats from the pesticide chlorpyrifos.

The final legislation calls for a four-year extension of the pesticide registration law, which sets the fees that companies pay for EPA to review and register their farm chemicals.

It would increase the fees, which the industry didn't oppose, and it would provide funding for grant programs that aid education in the safe application of farm chemicals.

PRIA is generally supported by pesticide makers as well as by critics of pesticides, as it sets up a way to pay for EPA reviews at a lower cost to taxpayers.

In a letter to leaders of the House and Senate agriculture committees, farm groups called the law "essential in ensuring that growers and users of pesticides have timely access to products that help them produce the food, fuel, and fiber the world depends on."

The earlier version of PRIA had expired in 2017, but Congress maintained it through short extensions in appropriations bills. This is the fourth version of PRIA.

House Agriculture Chairman Collin Peterson (D-Minn.) said earlier this month that he was trying to see if the bill could pass the House without Republican votes and that leaders hadn't quite untangled the situation.

But the Senate passed its bill from Agriculture Chairman Pat Roberts (R-Kan.) the next week, mimicking a bipartisan measure the chamber had passed last year.

E&E News
Proposed 'once in' repeal under White House review
https://www.eenews.net/greenwire/stories/1060122443/search?keyword=epa
Sean Reilly
February 26, 2019

EPA is proceeding with a long-awaited rulemaking to lock in last year's repeal of a Clinton-era policy for industrial sources of hazardous air pollutants.

Agency staffers sent the draft rule to the White House Office of Information and Regulatory Affairs for a standard review yesterday, according to an official website. The proposal comes more than a year after EPA air chief Bill Wehrum announced in a memo plans to scrap the "once in, always in" policy (Greenwire, Jan. 26, 2018).

The policy, dating back to 1995, had required factories and other "major" sources of benzene, arsenic and other air toxics to abide by strict "maximum achievable control technology" standards even after their emissions fell below the thresholds that originally triggered those standards. In setting the policy, an EPA air official at the time described it as intended to prevent industry backsliding. Wehrum and other critics argued that it discouraged businesses from reducing pollution and ran contrary to the Clean Air Act.

In the January 2018 memo, Wehrum signaled plans to move ahead "soon" with a formal rulemaking to consolidate the new interpretation; agency lawyers had reiterated that intention in responding to lawsuits brought by states and environmental groups challenging the policy's repeal. The U.S. Court of Appeals for the District of Columbia Circuit last week scheduled April 1 oral arguments on the consolidated litigation (Greenwire, Feb. 20).

An EPA spokeswoman did not respond to an emailed question this morning asking why it had taken the agency so long to go forward with the rulemaking. Wehrum, a lawyer who represented an array of industries when in private practice,

had previously sought to scrap the "once in, always in" policy via a rulemaking during his stint as acting EPA air chief from 2005 to 2007 under President George W. Bush.

Congress blocked that attempt; although EPA never took final action on the proposed rule, Wehrum noted last year that it had never been withdrawn.

The Burlington Record
Benevento: Andrew Wheeler's real record of EPA clean up for Colorado
http://www.burlington-record.com/ci_32478262/benevento-andrew-wheelers-real-record-epa-clean-up
Doug Benevento
February 26, 2019

Ean Thomas Tafoya's February 13 critique of EPA Acting Administrator Andrew Wheeler was replete with inaccuracies and ignored the real record of the agency's actions taken to protect human health and the environment here in Colorado.
First, the claim that Andrew Wheeler wants to "roll back" a rule that establishes standards for mercury emissions is not true. In fact, in 2015, the Supreme Court determined the previous administration failed to perform the required steps in developing the Mercury and Air Toxics Standards, including failing to consider a cost-benefit analysis. Our proposal corrects flaws in the previous administration's 2016 response to the Supreme Court order. We completed the long-overdue, cost-benefit analysis and maintained the existing rule while soliciting feedback from the public on options.

Even more egregious, and inaccurate, are Mr. Tafoya's attacks on the Environmental Protection Agency's actions to address harmful contaminants in our water resources. Take for example PFAS, a class of contaminants found in groundwater at three known locations here in Colorado. These substances pose significant human health concerns, and the EPA has worked closely with state and local agencies, as well as water utilities, to address exposure. In fact, last week, at Andrew Wheeler's direction, the EPA released the first comprehensive national plan to address this threat to our nation's drinking water.
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The progress the EPA is making to clean up Superfund sites under the leadership of Acting Administrator Wheeler should also be noted. In 2014, several neighborhoods in Pueblo were found to be contaminated with heavy metals to the extent that they required cleanup under Superfund, a law designed to clean up the nation's most polluted sites. At the funding levels the EPA had originally established for this site, it would have taken well over a decade to clean up lead and arsenic at impacted homes, meaning a decade of exposure for children. When brought to the attention of Andrew Wheeler, he accelerated funding for the site to complete the cleanup in three to four years. We are working similarly to improve the quality and pace of progress at other sites here in Colorado, and across the West.

While the Senate will deliberate and vote to determine who the next EPA administrator will be, that process should not be an invitation for the Colorado Latino Forum or other opportunists to engage in scare tactics that mislead the people of Colorado. The public deserves better.

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