Message

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Region 2 News Clips

Water providers put cost for 1,4-dioxane treatment systems at $840M (NEWSDAY; February 14, 2019)

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EPA To Unveil Long-Awaited 'Action Plan' On Curbing Toxic PFAS Chemicals (NJ SPOTLIGHT; February 14, 2018)

The U.S. Environmental Protection Agency will announce today a long-awaited plan for how to manage the toxic PFAS class of chemicals, which has contaminated drinking water and soil in many parts of the United States including New Jersey.

Why is a stormwater management bill being called a 'rain tax'? (NJTV NEWS; February 13, 2019)

A bill aimed at managing New Jersey's stormwater runoff and the pollution that comes with it is being dubbed a "rain tax" by some.

Empower NJ: 13 Frack Gas Projects Undermine Murphy Clean Energy Plan (INSIDER NJ; February 13, 2019)

A report released today documents the devastating climate impacts if 12 new frack gas projects in New Jersey move forward with one completed in 2018, in stark contrast to Governor Murphy's stated commitment and legal requirements to combat global warming and reduce greenhouse gas emissions.

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NEWSDAY

Water providers put cost for 1,4-dioxane treatment systems at $840M

February 14, 2019

Long Island water providers say an estimated $840 million price tag to add treatment systems to 185 drinking water wells contaminated by 1,4-dioxane — a chemical the state is expected to regulate this year — could lead to a spike in water rates.

The cost estimate, released by the Long Island Water Conference ahead of its meeting Thursday, is significantly higher than the $317.7 million released by the state Department of Health in December. The health department had identified 89 wells statewide, 82 of which are on Long Island, where 1,4 dioxane was found at concentrations higher than 1 part per billion, the level recommended by a state drinking water quality council panel in December.

The additional cost estimate, plus $30 million in annual operation and maintenance costs, could cause water rates to double, according to water providers. They are asking for state aid and a delay on when the state would start enforcing a standard for 1,4-dioxane.

The chemical 1,4-dioxane, designated by the U.S. Environmental Protection Agency as a likely human carcinogen associated with liver and kidney damage, is the top concern of drinking water providers because it has been found widely on Long Island, and is not removed through conventional treatment methods, water providers said. The man-made chemical is found in industrial solvents and in trace amounts in cosmetics, detergents, shampoos and other home care products.

Environmentalists and health advocates said the state should implement the new standard for the chemical as quickly as possible to protect the public.

Dennis Kelleher, a spokesman for the Long Island Water Conference and executive vice president of Melville-based H2M architects + engineers, said the new cost estimate is higher than the state's because water providers start treating wells before contamination reaches maximum levels. The new estimate also includes smaller water districts on Long Island not captured in the original survey, and treatment for the chemical, which is proving to be expensive.

Representatives from the Long Island Water Conference, a coalition of more than 50 water suppliers and industry representatives, are meeting with state and local lawmakers and state government officials Thursday at the Suffolk County Water Authority's education center in Hauppauge to ask for additional state aid and a delay in when they have to meet the standard and to propose banning 1,4-dioxane from household products.

The Suffolk County Water Authority, which provides water to 1.2 million residents, estimated at least $50 million in immediate costs to treat wells where 1,4-dioxane levels are at or above the 1 part per billion recommended by the state water panel.

"These are tremendous costs. This could create rate shock," said Jeff Szabo, Suffolk County Water Authority's chief executive officer.

In 2018, 38 of the authority's roughly 600 drinking water wells tested at levels above 1 part per billion, according to data provided by the Suffolk authority.

New York State in December set aside $200 million for emerging contaminants, like 1,4-dioxane and a pair of other contaminants the state is expected to regulate this year. But Szabo said the state needs to provide more money to help water providers and remove a $3 million cap on grant awards for each water provider.

"The funding that's been allocated won't be enough to address contamination," he said. "The cost burden will be picked up by ratepayers."

State Sen. James Gaughran (D-Huntington), who had been chairman of the Suffolk water authority until this year, said the state's investment was a "down payment" on future costs. He hopes the state approves a similar amount for water programs this year.

"The costs are so astronomical. This is a total game-changer for the industry," he said.

Asked about the cost estimate, Brad Hutton, deputy state commissioner of public health, said the state's $200 million fund for emerging contaminants is the most of any state in the nation. Gov. Andrew M. Cuomo's proposed 2019-20 budget being debated in Albany includes another $500 million for clean water projects, though that includes stormwater, sewer and other drinking water projects.

“It remains to be seen how many systems will need treatment and what the costs will be,” Hutton said.

Szabo said it's too early to predict what a rate increase would look like, but said 1 percent rate increases generate roughly $1.2 million in additional revenue. It would take a 42 percent rate increase to raise $50 million. Average residential water bills are $410 a year for Suffolk authority customers, who use 160,000 gallons.

Kelleher said water rates, without additional state help, could double in some water districts where multiple wells are contaminated.

While the Suffolk authority and at least 10 Nassau County water providers have sued chemical manufacturers and distributors to recoup treatment costs for 1,4-dioxane, the litigation could take years to settle. There's no direct federal funding available for water projects, though the federal government funds a state account used for a loan program.

The Long Island Water Conference survey found contamination at about 185 wells at .5 parts per billion, a lower standard than the state used to come up with its cost estimate. Water providers generally start planning to treat water when contamination reaches half the regulatory standard.

Kelleher called for the state to give water providers more time to meet any possible new standard — at least three years, rather than the 18 months other standards had been set at in the past, given costs and a potential shortage of qualified design professionals and engineers.

Judith Enck, a former EPA regional administrator and now a visiting professor at Bennington College, Vermont, called a suggested delay "wildly irresponsible. The regulatory agencies are slow enough. What are you going to say, drink contaminated water for a longer period of time?"

She added, "If it's expensive to treat, I'd argue it's more expensive to have more illness and more suffering among the people on Long Island."

Hutton said the state is looking at announcing a recommended drinking water standard "very shortly," which will be followed by a two- to three-month public comment period. The department expects the standard to become enforceable in 12 to 18 months after final approval, but the state Department of Health would be willing to speak with a water system that believes it would take longer, Hutton said.

Amid concerns the federal EPA would not set drinking water standards for new contaminants, New York State passed a law in 2017 establishing a Drinking Water Quality Council to set levels for three emerging contaminants of increasing concern to health experts: perfluorooctane sulfonic acid (PFOS), found in firefighting foams; perfluorooctanoic acid (PFOA), used in the manufacture on nonstick and stain resistant products, and 1,4 dioxane.

PFOS has been found at Gabreski Air National Guard Base in Westhampton Beach and a Suffolk County fire training center in Yaphank, and both have been named state Superfund sites. Two public water supply wells near the Hampton Bays Fire Station were closed when the chemicals were detected, while PFOA and PFOS were found in more than 150 private wells in Wainscott, near the East Hampton Airport. PFOS also has been found at Brookhaven National Laboratory in Upton.

The state Department of Health estimated that to regulate PFOA and PFOS at 10 parts per trillion, the amount recommended by the panel, statewide costs would be $855 million in capital and $45 million in annual operating costs. The Long Island Water Conference did not estimate Long Island's share of the cost to regulate PFOA and PFOS, which can be removed with traditional treatment methods.

Chronic, lifelong exposure to .35 parts per billion of 1,4-dioxane represents a 1-in-a-million cancer risk, according to the EPA. In December, the panel of state health and environmental officials, water providers and academics recommended a drinking water standard of nearly three times that — 1 part per billion for 1,4 dioxane.

The drinking water quality council considered the stricter standard of .35 parts per billion, but some members, including representatives of water providers, opposed setting it at that level because of the cost.

Still, other panel members said the standard of 1 part per billion was protective of public health.

"I have to say I was born on Long Island. I have family on Long Island and I have four grandchildren on Long Island," panel member Joseph Graziano, a professor of Environmental Health Sciences and Pharmacology at Columbia University, said at the December meeting. "I'm comfortable with the 1 part per billion."

Harold Walker, a professor of environmental engineering at Worcester Polytechnic Institute and a member of the drinking water quality council, said, "I think the overall result of the council is a really solid number that's very protective of public health."

The panel's water standard recommendation is with state Department of Health Commissioner Howard A. Zucker. Hutton said the recommendation will "absolutely" come out before this year, and possibly before this summer. Water providers and environmentalists expect the standard to be set at the 1 part per billion, which Cuomo touted as a level that would be the most protective in the nation.

A handful of wells with high detection levels have been taken offline in the past couple of years, while other wells are only used during peak summertime demand, water officials said. Other contaminated wells are "blended" with cleaner water, where possible.

A Suffolk Water Authority well in East Farmingdale with 1,4-dioxane detection at 19.9 parts per billion was taken offline in February 2018. A Hicksville Water District well with 1,4-dioxane detection at 33 parts per billion, the highest in the nation during a 2013-15 national survey of wells, was taken offline in 2016.

But water providers said most wells with contamination levels above the recommended level have remained in use.

The Water Authority of Western Nassau County, which serves 120,000 people at Elmont, New Hyde Park, Floral Park and other nearby areas, has one site with two wells that tested at 2.6 parts per billion and 19.2 parts per billion in December.

The authority is studying treatment options, but the wells are necessary to keep water flowing, said Michael Tierney, superintendent of the Water Authority of Western Nassau.

If they shut down, "We wouldn't be able to deliver water in that area. We wouldn't be able to keep up with demand," he said.

How to treat 1,4-dioxane

Treating 1,4-dioxane, a likely carcinogen set to be regulated by the state this year, is especially difficult and costly. Only one system, in Central Islip, has been approved for use in New York, though others are being tested.

Removing 1,4-dioxane involves mixing contaminated water with a chemical like hydrogen peroxide. The water is then blasted with UV rays from dozens of light bulbs inside a system. The water then filters through a pair of tanks filled with 20,000 pounds of granular-activated carbon.

Cost estimates for the treatment, known as advanced oxidation process, vary. Suffolk's water authority said its system in Central Islip cost $1.2 million, but the location already had a building and carbon filtration system for other contaminants on-site. A pilot system at Bethpage Water District cost $2.8 million. The Long Island Water Conference said with design costs and if new buildings are required, future systems could cost in excess of $4 million.

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NJ SPOTLIGHT

EPA To Unveil Long-Awaited 'Action Plan' On Curbing Toxic PFAS Chemicals

February 14, 2018

The U.S. Environmental Protection Agency will announce today a long-awaited plan for how to manage the toxic PFAS class of chemicals, which has contaminated drinking water and soil in many parts of the United States including New Jersey.

The agency said its "Action Plan" will include monitoring and cleaning up the chemicals, which are linked to cancer and other health conditions including high cholesterol, low birth weights, and immune system problems.

But it is unclear whether the agency will also propose enforceable Maximum Contaminant Limits (MCLs) for drinking water, which advocates say are essential for protecting human health against the chemicals. Implementation of any new standards could take years.

"EPA's Action Plan will move forward with the Maximum Contaminant Level (MCL) process outlined in the Safe Drinking Water Act for PFOA and PFOS — two of the most well-known and prevalent PFAS chemicals," the agency said Wednesday.

More monitoring, more research

According to a Congressional aide who was briefed late Wednesday, it will be a five-part plan that includes more monitoring, more research, and listing the chemicals as hazardous substances that would enable communities to go after polluters.

Any move to propose MCLs would come as a surprise after a recent report from Politico that the EPA had decided not to set national standards for the chemicals despite calls from campaigners and state officials for it to establish levels that would protect public health.

Enforceable national standards would replace the EPA's current health advisory level of 70 parts per trillion for PFOA and PFOS combined, a level that campaigners say is not stringent enough to protect public health. David Andrews, senior scientist at Environmental Working Group, a national advocate for PFAS curbs, said he expects the EPA to nudge the regulatory process forward but not to propose specific MCLs.

"The next step would be a regulatory determination that they would pursue MCLs so if they follow that process it would be an incremental step," Andrews said.

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NJTV NEWS

Why is a stormwater management bill being called a 'rain tax'?

February 13, 2019

A bill aimed at managing New Jersey's stormwater runoff and the pollution that comes with it is being dubbed a "rain tax" by some.

"This is a new tax, no matter how you cut it, and the folks of New Jersey who just cannot afford it anymore," said Assemblyman Hal Wirths.

But supporters of the Clean Water and Flood Reduction Act, as it's officially known, say the bill's nickname is misleading.

"You know, it's unfortunate that people are mischaracterizing this as a rain tax, as a higher tax. In fact, it's not a tax at all," said Chris Sturm, managing director of policy and water at New Jersey Future.

Sturm says the bill would allow counties and municipalities to create stormwater management utilities. The utilities would be dedicated to reducing flood risk and filtering polluted runoff that goes directly into the states' waterways. Under the proposed law, which has cleared the Legislature, fees would be imposed on owners of properties with large amounts of impervious surfaces.

"Things like roofs and parking lots and driveways and so forth," Sturm said.

Sturm says the fee for each municipality would vary depending on how big of a problem flooding is in the area.

"First of all, you won't see communities taking this up because they're not facing severe flooding problems. But in communities with really big flooding problems, the cost of inaction is much greater. Businesses shut down, people can't get to work, property is damaged," said Sturm.

But Wirths says it doesn't matter if it's called a tax or a fee — it's still going to mean money out of taxpayer pockets.

"So we're going to create another bureaucracy that can get completely out of control. We don't know what limits or how much they're going to tax, and it's just a bad bill, and it's going to continue to hurt the business environment in New Jersey," Wirths said.

"Towns have a sewer utility, or they have a water utility or they have an improvement authority. No new bureaucracy, no new salaries, no new anything. It's just, you now have a mechanism to fund these capital improvements, which you didn't have before," said Sen. Bob Smith, the bill's sponsor.

Smith says if the state's storm water runoff isn't managed, it could impact tourism.

"Barnegat Bay and the Jersey Shore, which is the source of $3 billion of tourism every year has issues. There's more than 2,000 failing storm water basins in and around the Barnegat Bay," Smith said.

The EPA estimates it could take 20 years and $16 billion to upgrade the state's stormwater infrastructure to get it where it has to be. If the governor signs the bill, New Jersey would join 40 other states that have stormwater utilities.

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INSIDER NJ

Empower NJ: 13 Frack Gas Projects Undermine Murphy Clean Energy Plan

February 13, 2019

A report released today documents the devastating climate impacts if 12 new frack gas projects in New Jersey move forward with one completed in 2018, in stark contrast to Governor Murphy's stated commitment and legal requirements to combat global warming and reduce greenhouse gas emissions.

The report, *FIGHTING Climate Change in NJ: The Urgent Case for a Moratorium on all Fossil FuelProjects* (http://empowernewjersey.com/MoratoriumReportFeb2019.pdf) authored by the **Empower NJ: No Fossil Fuel Projects** campaign, calculates the previously overlooked cumulative greenhouse gas emissions (GHG) from these 13 projects (see Appendices I and II for details of each project) would increase New Jersey's total GHG emissions by approximately 30% and the 5 power plants would spike GHG emissions from electricity generation by roughly 76%.

The report makes a powerful case for a moratorium on new fossil fuel infrastructure until New Jersey has rules and standards in place to achieve our state's 100% clean energy goals and comply with existing law and stated Murphy Administration policy. It describes the major actions needed during the moratorium and provides an analysis of the key economic factors involved in effectively transitioning to a green economy.

State legislators fighting against climate change and local mayors on the front lines of these projections joined **Empower NJ: No Fossil Fuel Projects**, a growing coalition of over 58 progressive, faith, environmental and citizen groups (see Appendix III of the report for a full list of members) calling on Governor Murphy to initiate the moratorium, in releasing the report.

"This report comes out at a critical time. The choices we make today—to continue to guzzle fossil fuels, or to build a sustainable society powered by renewable energy—will affect not just our lives, but our children's and grandchildren's lives. There is no excuse for inaction, and no reason to build new fossil fuel plants,"**said Senate Majority Leader Loretta Weinberg (D-37), a leading opponent of the Meadowlands gas plant**.

Assemblyman John McKeon (D-27) added: "We can't afford the increased greenhouse gas emissions from these fossil fuel projects. A moratorium until protections are in place would ensure we meet our obligations under the Global Warming Response Act, Paris Climate Accords and the US Climate Alliance, and are on track to achieve Governor Murphy's commitment to be 100% clean energy by 2050. At minimum, we need to regulate greenhouse gasses under the Clean Air Act, strengthen water rules weakened by the Christie Administration, and close loopholes that let polluters in New Jersey buy their way out of cleaning up deadly ozone."

Major findings of the report include:

- A **32% increase** (32 million metric tons [MMt]/year) in total NJ CO2e GHG (CO2 and methane) emissions over current levels from the 13 projects. With methane being 86 times more efficient at trapping heat than CO2 over a 20-year time frame, GHG emissions from fracked natural gas are greater than those from coal.
- A **76% increase** (14.2 MMt/year) in CO2e GHG emissions from in-state power plants over 2017 levels by the 5 power plants (Sewaren 7 now operating under 2018 approvals).
- Spiking GHG emissions make it **impossible to meet the clean renewable energy objectives** of the Murphy Administration and the state's obligations under existing law despite advances on offshore wind, battery storage, etc.
- **Demonstrated lack of need for 12 of the projects** to residents and businesses in New Jersey as any true increase in energy demand can be met with improvements in energy efficiency, conservation and clean renewable energy developments. Two of the projects would not even deliver any energy to State residents.
- **Significant increases in already unhealthy levels of ground level ozone** and other toxic air pollutants leading to more premature deaths and increased health care costs.
- Investing in renewable energy and **clean renewables will create more jobs** than investing in new fossil fuel projects.

"It's kind of scary that no one until now has done the basic math around these cumulative impacts or shared it," **stated Ken Dolsky of the Don't Gas the Meadowlands Coalition and a primary author of the report**. "Our research shows building these gas projects would make it impossible to achieve Governor Murphy's objectives in EO 28 and what the Global Warming Response Act requires. We also document that the need in NJ for these new projects is either non-existent or very soft. That is why we are calling for a moratorium to give the state the time it needs to get its act together."

"New Jersey is the most densely populated state so we have to be a leader when it comes to protecting clean air and water," **Senator Bateman (R-16) said**. "Climate change is real and unless we take action now, our kids and our grandkids won't have access to these resources in the future. Dangerous projects like the PennEast Pipeline must be stopped and we must permanently ban fracking in the Delaware River Basin. I am proud to be a part of this fight. We have made a lot of progress, but there is so much more to do and we need a moratorium to get there."

Specific steps the report calls for during the moratorium include but are not limited to:

- Establishing rules under existing air pollution laws to limit GHG emissions and enable DEP to reject permits for projects that would cause New Jersey to exceed GHG limits;
- Reversing Governor Christie's rollbacks of water and land use regulations that make it easier to build pipelines in environmentally sensitive areas;
- Eliminating the ability to increase ozone levels by allowing the purchase of ozone credits in any area out of compliance with EPA standards;
- Championing a full ban on fracking and all of its associated activities throughout the Delaware River Basin and in New Jersey; and
- Creating a strong green jobs program including training and placement in the new green economy, built on and driving living wage union jobs in emerging sectors (solar, offshore wind, electric car infrastructure, efficiency, etc.).

"Climate change is creating real, devastating effects and New Jersey is experiencing it first-hand. Areas are flooding at higher rates than ever before, causing distress amongst homeowners who face rising insurance rates and high costs to elevate their structures. The time to act is now, by eliminating new fossil fuel projects we can take the first of many

steps to protect our environment and ensure that our beautiful Garden State is protected for future generations," **continued Assemblywoman Valerie Vainieri Huttle (D-37)**.

"The Roseland Compressor station is a cause of tremendous concern to my constituents, and plans to build a second station have compounded the worry, especially given its proximity to a power transfer station and protected wetlands. The Roseland project is one of the 13 pipelines, power plants and compressor station projects in the report. While individually quite concerning, their cumulative impact (a 32% increase in greenhouse gas emissions) is even more so. I stand squarely with the EMPOWER NJ coalition in calling for a moratorium on all of these projects until such time as proper protections are in place to ensure compliance with the 80% decrease in greenhouse gas emissions mandate of the 2007 Global Warming Response Act and Governor Murphy's goal of an of 100% clean energy," **concluded Assemblywoman Mila Jasey (D-27)**.

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National News

E&E

Wheeler worried about 'optics' of coal lunch

https://www.eenews.net/eenewspm/2019/02/12/stories/1060120371
Maxine Joselow

Shortly before taking over as acting EPA administrator, Andrew Wheeler fretted about the "optics" of speaking at a coal industry gathering, newly released emails show.

On June 21, 2018, a representative from Peabody Energy Corp. invited Wheeler to speak at a Washington Coal Club luncheon, according to the emails obtained by the Sierra Club following Freedom of Information Act litigation.

Wheeler's response: "I'm going to have to pass on a coal lunch this summer. I'm concerned about the optics."

The Washington Coal Club is a Washington, D.C.-based nonprofit that "meets monthly with knowledgeable speakers to discuss coal and industry related topics," according to an archived version of its website.

The email exchange occurred while Wheeler was still serving as deputy EPA administrator. He assumed the position of acting EPA administrator July 7, after Scott Pruitt resigned under a crush of ethics allegations.

The exchange also came after President Trump directed the Department of Energy to consider market interventions to boost struggling coal and nuclear plants, sparking backlash among natural gas operators and others (*Greenwire*, June 1, 2018).

The Federal Energy Regulatory Commission ultimately rejected a DOE proposal to prop up struggling coal and nuclear plants. EPA was not involved in those deliberations.

Since taking the agency's helm on an acting basis, Wheeler has kept up a steady stream of industry meetings. In his first full month on the job, he was scheduled to have meetings with groups including the American Fuel and Petrochemical Manufacturers, BP America, Delta Air Lines Inc., and Valero Energy Corp. (*Greenwire*, Dec. 4, 2018).

The Peabody representative who contacted Wheeler was Ray Shepherd, the company's vice president of federal government affairs.

Reached by email this afternoon, Shepherd said the Washington Coal Club luncheon went on as planned, despite Wheeler's absence.

"The group met at lunch to discuss coal-related topics," Shepherd said.

Informed of the email exchange, John Walke of the Natural Resources Defense Council pointed to Wheeler's record of rolling back major regulations on power plants and vehicles, among other things.

"We appreciate Mr. Wheeler's concern for 'optics,' but Americans are more concerned with his actions that let coal plants increase dangerous air pollution, poison waterbodies with coal ash & worsen climate change," Walke said in an email. "Skipping lunch has not improved that harmful agenda."

Sierra Club Legal Director Pat Gallagher said, "Wheeler learned from Pruitt's PR mistakes, but he's still following his playbook, rolling back vital clean air and water safeguards to the detriment of American families and for the benefit of the fossil fuel companies whose optics are too bad for a meeting."

Asked for comment, an EPA spokesman noted that Wheeler was a former officer of the Washington Coal Club.

"Acting Administrator Wheeler felt as a former officer of the group it was inappropriate to speak to the organization in his official capacity," the spokesman said in an email. "He has not and has no intentions of speaking to this group while at EPA."

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Bloomberg Environment
Dropping Air Permit Enforcement Priority is Progress, Some Say
https://news.bloombergenvironment.com/environment-and-energy/dropping-air-permit-enforcement-priority-shows-epa-success
By Amena H. Saiyid

- EPA can shift enforcement initiatives based on pressing concerns
- New priorities due in part to changes in the air permitting program, other environmental concerns

Dropping air pollution permitting as an EPA enforcement priority is a measure of the 20-year-old program's success and not a capitulation to polluters, as some critics are suggesting, former agency attorneys said.

The Environmental Protection Agency is weighing whether to drop new source review air pollution permits from the list of enforcement priorities after nearly 21 years. The agency said it has reached dozens of settlements over permitting violations since it made permits a priority in 1998 and that regional offices are capable of handling any needed oversight.

"Now it's ready to declare the enforcement initiative a success and move on to other concerns like drinking water utility compliance," Andrew Stewart, who served in the EPA Office of Enforcement and Compliance Assurance under both President George W. Bush and President Barack Obama—from 2003 to 2015—including as a division director in the civil enforcement office, told Bloomberg Environment.

The EPA is in the process of deciding which environmental violations should get the most scrutiny during the 2020 through 2023 time period. With limited resources and pressing concerns like lead exposure through tap water, some former enforcement officials told Bloomberg Environment it makes sense the agency would drop one of its oldest targets.

"I think it's more a question of where the agency will deploy its limited enforcement resources on a national level," said Stewart, who now is a counsel in the Washington, D.C., office of Sidley Austin LLP.

Under the Clean Air Act, new source review permits are required for any construction or expansion of industrial facilities like power plants or refineries that cause air pollution to increase significantly. The permits require the facilities to install best available pollution controls in a process companies often complain is costly and takes too much time.

There is general agreement among EPA's former cops that it isn't unusual for an administration to remove some areas previously included in the priority enforcement list in favor of new initiatives as part of the periodic review.

New Rules Mean New Priorities

The EPA under the Trump administration has vowed to streamline the permitting process to address industry concerns. Areas where the agency has updated its regulations haven't typically been viewed as primary enforcement targets, Kevin Minoli, a partner with Alston & Bird LLP's Washington, D.C., office who previously was the EPA's acting general counsel, told Bloomberg Environment.

"When the agency is actively changing how those rules apply, it is often not an effective use of limited enforcement resources to hold companies accountable," he said.

Changes to the permitting program include guidance on how industrial facilities can tally emissions from upgrades to determine whether they triggered the permitting review. The agency also has revived a 2009 rule that will allow power plants, factories, and refineries to treat multiple changes at their facilities as a single project for the purpose of getting air pollution permits.

'Core' Enforcement Continues

Though air pollution permitting may no longer be a national priority, the EPA said enforcement will continue through its "core programs," which represent all the work the agency does when it isn't pursuing national priorities.

"When they return a program to the 'core,' it doesn't mean the regions won't do investigations," Stewart said. "Rather, it means they will have more autonomy to look into complaints."

But the agency's resources have shrunk, also leaving less room for core program work.

And the core enforcement program is usually focused on overseeing state programs, which traditionally have been "very soft" in pursuing new source review violations, said Eric Schaeffer, executive director of the Environmental Integrity Project. Schaeffer worked in the EPA enforcement office from 1990 to 2002, including as director of civil enforcement, where he oversaw new source review cases.

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Bloomberg Environment
Toxic Sterigenics Pollution Prompts Democratic Oversight Bills
https://news.bloombergenvironment.com/environment-and-energy/congress-increases-demands-on-epa-regarding-illinois-emissions
By Stephen Joyce

- Ethylene oxide emissions at Willowbrook, Ill., facility spark calls for action
- Criminal investigation latest demand

Elevated carcinogenic air pollution from an Illinois medical sterilizer prompted the state's U.S. senators to introduce bills demanding the EPA set tougher new emissions standards and disclose when it detects elevated health risks.

The legislation is a response to what the Democrats say is the Environmental Protection Agency's mishandling of the discovery of ethylene oxide emissions at a Willowbrook, Ill., facility operated by Sterigenics U.S. LLC. The legislators Feb. 13 also called on the EPA to open a criminal investigation into allegations of misconduct alleged by former Sterigenics employees and for an independent contractor to monitor and confirm the company's emissions of ethylene oxide.

Sens. Tammy Duckworth (D-Ill.) and Dick Durbin (D-Ill) introduced bills Feb. 12 that would force the EPA to update its emissions limits on ethylene oxide and disclose when it finds elevated health risks due to ethylene oxide emissions (S. 458). Ethylene oxide is a flammable, colorless gas used to sterilize medical equipment and make other products, such as antifreeze.

Another bill (S. 451) would provide $20 million for the EPA to update not less frequently than once every two years its National Air Toxics Assessment, an analysis conducted every three years since 1996 to help the EPA identify air pollutants and locations of concern due to emissions.

The bills and letter come after the EPA recently released monitoring data showing the presence of ethylene oxide at the Willowbrook facility. The EPA, which has concluded the emissions elevate the risk of cancer, conducted several rounds of air monitoring during 2018 in Willowbrook and documented the presence of ethylene oxide emissions at the site.

Sterigenics and the EPA didn't immediately respond to Bloomberg Environment's requests for comment.

Bill Wehrum, head of the EPA's air pollution office, told Bloomberg Environment in December 2018 the agency could propose the first update to its toxic pollution standards for medical sterilization facilities such as Sterigenics this year.

'Public Health Crisis'

Speaking on the Senate floor Feb. 12, Durbin said he called acting EPA Administrator Andrew Wheeler Feb. 8 to insist the agency take action the Sterigenics plant.

"The EPA has to do a lot more," Durbin said. "The EPA needs to treat this matter like the public health crisis that it is."

The Senate bills were referred to the Environment and Public Works Committee. House companion bills sponsored by Illinois Democrats are expected to be introduced no later than Feb. 15

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Chicago Tribune

Suburban towns join lawsuits against Sterigenics and urge Illinois attorney general to shut company down

https://www.chicagotribune.com/suburbs/burr-ridge/news/ct-dhd-sterigenics-towns-respond-tl-0214-story,amp.html
Kimberly Fornek

As soon as residents in the Willowbrook area learned last summer that Sterigenics' facilities emits gases that can cause cancer, they called for the product sterilization company to stop operations.

Elected officials at almost all levels of government have now joined the chorus of voices calling for a shutdown of the two buildings near Route 83 and Midway Drive, especially following the most recent testing results from the federal Environmental Protection Agency.

On Feb. 19, the Hinsdale Village Board is expected to approve a resolution asking Sterigenics to immediately cease operations using ethylene oxide and not resume until better and verifiable safeguards are in place.

On its website, the village states it is advocating on behalf of its residents, although Hinsdale Village Board members have no authority over Sterigenics.

The resolution is a symbolic gesture to show the Hinsdale community and federal and state leaders who do have the regulatory authority that Hinsdale is standing with others advocating for a shut down, said village manager Kathleen Gargano.

For the second time, Hinsdale officials have requested the EPA to include the village in air monitoring, Gargano said. The EPA did not collect air samples within Hinsdale's borders when the village requested it in November.

Hinsdale officials are considering conducting their own air sample testing, Gargano said.

Hinsdale Village President Thomas Cauley, Jr. has recused himself from the discussions of Sterigenics since October when he learned Sterigenics is a client of Sidley Austin LP, the law firm where Cauley works.

Willowbrook, Darien and Western Springs all have asked the Illinois Attorney General and the DuPage County State's Attorney to seek a temporary restraining order under the Illinois Environmental Protection Act to have Sterigenics immediately suspend operations.

"While the complaint against Sterigenics wends its way through the legal process, Sterigenics continues to operate unabated," Western Springs Village President Alice Gallagher wrote Feb. 7 to the chief of the Illinois Attorney General's environmental bureau.

DuPage County State's Attorney Robert Berlin and Illinois Attorney General Kwame Raoul issued a statement Feb. 5 that the most recent testing samples from the federal EPA show a clear link between Stergenics emissions and EtO levels. They said the are reviewing data with the Willowbrook EtO Task Force, which includes retained environmental professionals, including toxicologists.

"We will exercise all available legal authority to protect the community from this exposure," the statement read.

Sterigenics also issued a statement, saying "Any action to shut down a business operating well within regulatory limits, based on incomplete data taken out of context, sets an extremely bad precedent."

They said the Willowbrook facility is the sole sterilization facility for a number of medical devices.

"A disruption in production at this facility would halt sterilization of critical medical products," in Illinois and other areas, the statement read.

The attorney general and state's attorney's office at the end of October jointly filed a lawsuit against Sterigenics in state court alleging air pollution violations and creating a public nuisance. Sterigenics had the case transferred to federal court. Both offices subsequently asked a federal judge to remand the case back to state court.

Willowbrook joined the lawsuit and Burr Ridge officials plan to do the same once the court where it will be heard is settled, said Burr Ridge village administrator J. Douglas Pollock.

Hinsdale is weighing whether it will join the lawsuit, Gargano said.

Willowbrook has spent well over $300,000 on experts, ambient air testing and environmental law attorneys, and is approaching $400,000 in expenses related to Sterigenics, the village administrator Tim Halik said.

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E&E

Wehrum defends plan to link CPP, permitting revamps

https://www.eenews.net/eenewspm/2019/02/12/stories/1060120381
Sean Reilly

The Trump administration's proposed replacement for the Clean Power Plan won't work unless accompanied by an overhaul of the New Source Review pre-construction permitting program, EPA air chief Bill Wehrum said today in defending the agency's controversial bid to meld the two.

While the proposed replacement, known as the Affordable Clean Energy rule, would require utilities to upgrade the efficiency of existing plants, "NSR would stand in the way of the implementation of those efficiency projects and likely make viable projects nonviable," Wehrum told state regulators at a forum held as part of the National Association of Regulatory Utility Commissioners' winter policy summit.

"We propose to correct that so that New Source Review actually works in concert with the ACE rule and doesn't stand as a barrier to implementation," he said.

Though Wehrum's remarks were brief, they amounted to one of his most sustained efforts to publicly explain the rationale for grafting the proposed New Source Review change onto the ACE rule, unveiled almost six months ago.

Under the proposal, states would have the option of letting power producers adopt a new yardstick for gauging whether a plant upgrade is significant enough to warrant a New Source Review permit that could entail stricter pollution controls. Under the current system, companies have to forecast the potential effect on overall yearly air emissions; the proposed change, which has drawn fire from environmental groups, would instead allow an approach gauging whether the project in question would lead to a higher hourly emissions rate.

The proposed shift has the backing of the American Coalition for Clean Coal Electricity. For anyone who believes in the continued need for coal-fired power plants, "this is a good opportunity to upgrade the coal fleet because the rule is based on improving" plants' efficiency, said Paul Bailey, the group's chief policy officer, who shared the table with Wehrum.

Wehrum also took the occasion to again argue that the administration has no intention of eliminating the emissions limits embedded in the Obama-era Mercury and Air Toxics Standards, even while angling to repeal the underlying legal justification that gave EPA the authority to set those standards.

As evidence, he pointed to the fact that the proposal encompasses the findings of a statutorily required review that examined whether any tightening of the original 2012 standards was needed, either because of improvements in pollution control technology or a determination that some risk remains to the public.

The review concluded that no such changes were warranted, Wehrum said, in part because the emission controls required by the original standards are "very aggressive."

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Morning Consult

Preliminary EPA Data Shows Increase in 2017 Energy Sector Methane Emissions

https://morningconsult.com/2019/02/12/preliminary-epa-data-shows-increase-in-2017-energy-sector-methane-emissions/
BY JACQUELINE TOTH

Initial figures from a federal inventory of U.S. emissions calculated an uptick in methane emissions from the energy sector in 2017 compared to 2016.

The Environmental Protection Agency's draft of its report, "Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2017," depicts an increase in energy-related methane emissions to 290.1 million metric tons of carbon dioxide equivalent in 2017 from 281.3 million metric tons in 2016.

According to the data, coal mining in particular contributed to the increased emissions of methane, a potent greenhouse gas that holds heat in the atmosphere more effectively than carbon dioxide. While methane from natural gas systems increased by 1 percent in 2017 from 2016, there was a 16 percent increase in methane emissions from coal mining during the same time period.

The report attributed the spike to "a modest increase" in coal production and to less methane being recovered and used in the sector, where methane is released from work related to underground and surface mining and from coal-handling activities.

Overall, since 1990, the agency's latest figures indicate a decrease of more than 77 million metric tons of carbon dioxide equivalent of methane emissions from energy.

In a statement from a spokesman, Howard Feldman, senior director of regulatory and scientific affairs with the American Petroleum Institute trade group, focused on the downward trend of methane emissions witnessed since 1990. Feldman pointed to the decline in per-unit production emissions of methane as U.S. production has increased.

Many past EPA emissions estimates are recalculated and revised each year, according to the draft. An EPA spokeswoman said in an email that the numbers in the draft reflect the latest methodological updates to the data.

Some scientists remain concerned that the EPA undercounts methane emissions from petroleum and natural gas systems. A study published in Science last year tallied about 60 percent higher methane emissions for oil and natural gas supply chains than the agency's estimates.

The approach that the agency takes for its calculations particularly underestimates emissions from large, abnormal emissions sources, said David Lyon, a scientist with the Environmental Defense Fund and a co-author of the report in Science.

The EPA did not respond to a request for comment on the claims of undercounting methane emissions.

The emissions increase, Lyon said, also shows that progress is not being made toward the drastic reductions in carbon dioxide and methane needed to prevent and mitigate climate change impacts.

The EPA said it expects to issue a final inventory for this year by April 15, by which date it is supposed to provide the document to the secretariat of the United Nations Framework Convention on Climate Change.

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Oil & Gas Journal

EPA: US greenhouse gas emissions fell 0.3% in 2017 from year before

https://www.ogj.com/articles/2019/02/epa-us-greenhouse-gas-emissions-fell-0-3-in-2017-from-year-before.html

By Nick Snow

US gross greenhouse gas (GHG) emissions totaling 6,472 million tonnes of carbon dioxide equivalent (tCO_2e) in 2017 came in 21.1 million tCO_2e, or 0.3% less, than 2016's 6,493 million tCO_2e, the US Environmental Protection Agency reported.

The year-to-year decline was driven partly by a drop in CO_2 emissions from fossil fuel combustion to 4,920 million tCO_2e, which was a result of factors including a continued shift to natural gas from coal to generate electric power, more use of renewable fuel technologies at power plants, and milder weather that reduced demand, EPA said in its latest US Greenhouse Gas Inventory.

Total gross domestic GHG emissions in 2017 were 1.6% more than the 6,373 million tCO_2e in 1990, the inventory's baseline year, it noted. The 2017 amount was 14.1% less than 10 years earlier, when the inventory hit its peak of 7,371 million tCO_2e.

Petroleum was the largest single fossil fuel combustion source, with a 44.6% share, followed by 29.5% for gas, and 25.8% for coal, EPA's GHG inventory indicated.

Responding to this latest EPA report, Howard J. Feldman, American Petroleum Institute senior director for regulatory and scientific affairs, said the findings continue to reflect falling methane emissions per unit of US oil and gas production.

"The increased use of gas has reduced carbon emissions, lowered costs to American consumers, and increased our nation's manufacturing competitiveness," Feldman said. "US industrial electricity costs are lower than those of our foreign competitors, giving manufacturers—including producers of steel, chemicals, refined fuels, plastics, fertilizers, and numerous other products—a major competitive advantage."

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E&E

Race is on to define 'Green New Deal'

https://www.eenews.net/eedaily/2019/02/13/stories/1060120425

Geof Koss

The decision by Senate Majority Leader Mitch McConnell (R-Ky.) to bring up the "Green New Deal" for a Senate vote is prompting a rush to define the terms of progressive Democrats' ambitious proposal to tackle climate change.

GOP lawmakers are scrambling to highlight the possible side effects of the deal, outlined last week by Sen. Ed Markey (D-Mass.) and Rep. Alexandria Ocasio-Cortez (D-N.Y.), in some cases relying on a document distributed and later disavowed by the New York Democrat's office (*Climatewire*, Feb. 12).

Sen. John Barrasso (R-Wyo.) took to the Senate floor yesterday to outline a host of ramifications of the plan, which he said would mean the end of ice cream.

"Livestock will be banned," Barrasso said. "Say goodbye to dairy, to beef, to family farms, to ranches."

Sen. Cory Gardner (R-Colo.), a supporter of renewable energy who faces a tough re-election in his purplish home state in 2020, told E&E News he had no qualms about the upcoming vote, which is expected after the Presidents Day recess next week.

"I'll vote against socialism every time," Gardner said in a brief interview yesterday echoing Republican talking points against the plan.

Asked if he welcomed the underlying debate on climate change, Gardner reiterated the point.

"I think a debate on socialism is incredibly important," he said. "The fact that they're going to remodel every home and house and building in America, they're guaranteeing jobs and benefits to every single American, paying the unwilling to work, income redistribution. I hope that we can have a vote on this, I hope that we can vote on it every day."

As he walked away, Gardner made sure the reporter heard him say the plan should be called "the green new steal."

Rep. Sam Graves of Missouri, the top Republican on the House Transportation and Infrastructure Committee, took to Twitter yesterday with his own nickname — the "Green New Disaster."

Green 'aspiration'

Julian Zelizer, a professor of history and public affairs at Princeton University, saw McConnell's call for a vote as a way to push Democrats to take an early position on the ambitious proposal.

"He wants to take an idea or framework that is not fully vetted yet, and even some Democrats think is more expansive than they'd like, and force them to put them down for a vote sooner rather than later," Zelizer said.

The result of the vote could alternately embarrass Democrats who vote no, revealing them to proponents of the plan, or it could make proponents of the plan appear to be too radical.

Zelizer said McConnell and other Republicans recognized the proposal had been successful in generating debate about green policies. "It's his effort to try to kill it," he said.

Democrats largely shrugged off McConnell's gambit.

Senate Minority Whip Dick Durbin (D-Ill.) called the "Green New Deal" an "aspirational document" with goals he supports. But he added that the broad proposal might not easily translate into legislation that can pass Congress.

"It's an aspiration, I have an aspiration to be able to sing opera, you know; I don't think I am going to make it with this voice, but that is my aspiration," he added.

Durbin said he was not worried about the "Green New Deal" becoming an easy target for Republicans. Instead, he said Democrats should use their criticism to ask the GOP about its own climate plans.

"I hope they are going to bring the Republican approach to climate change as well. We'd like to see their approach," said Durbin, who like many Democrats has chided the GOP for taking no action on global warming in recent years.

Sen. Brian Schatz (D-Hawaii) took to Twitter to highlight the Republicans' lack of a climate strategy.

"When I say that R's have no plan for climate change, I know it's twitter and people are prone to exaggeration, so I want to be super clear: Republicans actually have no plan to address this threat to the planet. This is why young people are abandoning the Republican Party," he tweeted.

Schatz went further later in the afternoon, telling reporters, "Republicans have no plan for climate change except to aggressively make it worse." He added, "They're the only major political party on the planet that is dedicated to making climate change worse."

Markey told E&E News, "We haven't had a debate on climate change in 10 years, so I think it's very important for us to have as large a debate about the issue as we can. It's obvious that the 'Green New Deal' has unleashed incredible enthusiasm."

'Bring it on'

House Natural Resources Chairman Raúl Grijalva (D-Ariz.) said McConnell's move to vote on the resolution would simply be a messaging tactic for Republicans and an opportunity to rail about "creeping socialism."

Sen. Chris Murphy (D-Conn.) rejected the links between the "Green New Deal" and Ocasio-Cortez's socialist leanings.

"I hope all my colleagues read the actual resolution," he told reporters. "Why would we be against creating a whole bunch of jobs and saving the planet from destruction? You don't have to endorse everything the House author stands for economically by voting for the 'Green New Deal.'"

RL Miller, political director of Climate Hawks Vote, noted broad public support for a "Green New Deal."

She referenced a December poll by the Yale Program on Climate Change Communication that found 81 percent of registered voters from both major parties either somewhat strongly or strongly supported the proposal's main objectives.

Miller also suggested that a no vote could instead hurt Republicans facing tough challenges for their seats in 2020.

"Bring it on. Seriously, if he wants to bring a nonbinding resolution to the floor that is backed by 80 percent of Americans, give the people of Colorado a reason to vote Cory Gardner out of office," Miller said.

Co-sponsors of the "Green New Deal" resolution include many Democratic 2020 hopefuls, including Sens. Kamala Harris of California, Kirsten Gillibrand of New York and Amy Klobuchar of Minnesota.

Sen. Sherrod Brown (D-Ohio), who may also run for president, is keeping a distance from the "Green New Deal" for now, defending his environmental record.

CCS and nuclear

Barrasso said he welcomed debate by Democrats on climate change, noting his bipartisan efforts on carbon capture and sequestration and advanced nuclear technology — two issues addressed by bills that have been signed into law by President Trump.

"Those are the only two things that are out there that actually deal with carbon on what Secretary Moniz called large-scale successes," he told E&E News, referencing testimony by former Obama Energy Secretary Ernest Moniz before the Energy and Natural Resources Committee last week (*E&E Daily*, Feb. 8).

"Everything else doesn't move the dial. If you're not doing one of those two, all you're doing is talking, and they're not really doing anything that is productive."

Sen. Angus King (I-Maine), who also expressed skepticism about the "Green New Deal" during last week's hearing, declined to offer an opinion on how he would vote on the proposal but reiterated his own skepticism of the plan.

"I just know that I've spent a lot of my life in renewable power, and I know what's realistic and what isn't," King told E&E News. "I don't think the proposal is very realistic, but we'll wait and see if it comes up for a vote."

'Wouldn't encourage it'

Speaking before McConnell's announcement, at least one Republican senator said yesterday he had reservations about a possible vote on the "Green New Deal."

"I wouldn't encourage it. I mean, it's just an opening salvo, frankly," Sen. Kevin Cramer (R-N.D.) told E&E News. "I'm rather enjoying the Democrats debating it themselves. From a political standpoint, the more it can get talked about the better the politics looks for our side. But I also want to maintain some opportunity to make deals."

Noting his own state's mix of fossil fuels and renewables, Cramer said he's anxious to explore some energy deals with Democrats.

"I want some of the tax credits to work better for coal, I want infrastructure permitting for oil and gas, particularly the gas," he said. "I haven't done a ledger yet of what could be traded for what, but there's lots of pieces on the table."

Reporters Niina Heikkinen, Kellie Lunney and George Cahlink contributed.

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E&E

Democrats praise 'refreshing' change in Science Committee

https://www.eenews.net/greenwire/2019/02/13/stories/1060120481
Niina Heikkinen

The Science, Space and Technology Committee kicked off its long-awaited climate hearing this morning by agreeing on one basic fact: Climate change is happening.

Chairwoman Eddie Bernice Johnson (D-Texas) said the hearing would set the stage for future discussions about the "most relevant and up-to-date" science to inform the committee's work.

"Though this administration has regrettably chosen to ignore the findings of its own scientists in regards to climate change, we as lawmakers have a responsibility to protect the public's interest," Johnson said in her opening remarks.

Rep. Bill Foster (D-Ill.) praised the chairwoman for the change of tone in the committee. Former Chairman Lamar Smith (R-Texas) questioned the science behind man-made climate change.

"I'm really thrilled to see some of the changes happening in this committee," Foster said.

He also praised the decision to include Joseph Majkut, director of climate policy at the libertarian Niskanen Center, who has views on climate that are in the "scientific mainstream."

"That is refreshing," he said.

Witnesses highlighted the impacts of warming temperatures: sea-level rise, extreme weather, the spread of pests and worsening human health.

"Climate change is real, it's happening now and humans are responsible for it. The planet is running a fever. It's not an issue for the distant future, it's already affecting people," said Robert Kopp, director of the Rutgers Institute of Earth, Ocean and Atmospheric Sciences.

He emphasized the need to bring greenhouse gas emissions as "close to zero as possible." Other witnesses echoed Kopp's urgency.

Jennifer Francis, an atmospheric scientist at the Woods Hole Research Center, said it wasn't arbitrary that the international scientific community has focused on preventing more than 1.5 degrees Celsius in warming.

"It's actually useful because we use very sophisticated models to simulate the kinds of events that could occur under these kinds of scenarios. By doing that we can see, we really don't want a world with 2-degree warming," Francis said.

GOP focus on technology

Republicans raised concerns about making drastic changes in an effort to address emissions and what the costs of such an effort might be.

"Before we do away with flatulent cows and airplanes, we need to put a price tag on it, don't we?" said Rep. Ralph Norman (R-S.C.).

The committee's ranking member, Frank Lucas (R-Okla.), noted in his opening remarks that climate change was intensifying the impacts of drought and heat waves.

But he cautioned against a focus on "pie-in-the sky policies" demanding a transition to 100 percent renewable energy.

Both Norman and Lucas were making references to rhetoric surrounding the "Green New Deal" — a set of policies from progressive Democrats to address climate, social and economic concerns.

Lucas emphasized the need for investment in carbon capture and utilization, advanced nuclear, and renewable energy technologies.

"America has led the world in coal, oil and gas. Now we must lead again, and partner with industry to develop breakthrough energy technologies and make our existing energy sources cleaner and more affordable," he said in his opening remarks.

Rep. Brian Babin (R-Texas) questioned whether the American people should have to bear heavy financial burdens in the form of a carbon tax.

"It's hard for me to justify how we would be expected to pay that kind of price," said Babin.

Energy and Commerce Committee ranking member Greg Walden (R-Ore.) and Environment and Climate Change Subcommittee ranking member John Shimkus (R-Ill.) penned an op-ed released today also highlighting technology as a solution and railing against the "Green New Deal."

"While a full analysis of the Green New Deal has not been completed, the sheer scale and cost to implement such a proposal could have potentially devastating consequences on our national debt and on our economy," the pair wrote.

Hoping to put Democrats on the record, Senate Majority Leader Mitch McConnell (R-Ky.) yesterday announced a vote on the "Green New Deal."

Today Rep. Liz Cheney (R-Wyo.) said the House should follow suit. House Speaker Nancy Pelosi (D-Calif.) has yet to say whether she will put the resolution on the floor.

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E&E

Leaders want bill done by Friday and are pushing Trump to sign

https://www.eenews.net/eedaily/2019/02/13/stories/1060120415

George Cahlink **and** Geof Koss

Congressional leaders are racing against the calendar and a skeptical White House to get bipartisan legislation signed into law by Friday that would avert another government shutdown.

Yesterday Senate Republican and Democratic leaders repeatedly praised a deal they struck earlier in the week that would provide $1.375 billion for border barrier construction and fresh funding for several agencies, including EPA and the Interior Department. They urged President Trump to get behind the package to avoid any chance of a shutdown.

"From a Republican point of view, there is money in there for new barrier fencing, and there is no cap on interior enforcement. It's not everything the president hoped to get, but I think it's a good step in the right direction. I hope he'll decide to sign it," Senate Majority Leader Mitch McConnell (R-Ky.) said.

Senate Minority Leader Chuck Schumer (D-N.Y.) agreed that no one got "everything they wanted" but urged Trump to sign the deal and avoid "another nightmare of furloughed federal employees."

The bill's legislative text was due to be released as soon as today with first votes likely in the House tomorrow, congressional aides said.

Trump sent mixed messages yesterday on the deal, criticizing it but stopping short of threatening a veto.

"I'm not happy about it. It's not doing the trick. But I'm adding things to it," Trump told reporters. He then said he was "thrilled" the border wall is being built and vowed to find ways to shift funds to supplement the work.

Trump said he too wants to avoid another shutdown. "I wouldn't want to go to it, no. If you did have it, it's the Democrats' fault," he said.

Senators split on partisan lines on whether Trump would be able to shuffle dollars and build more than the 55 miles of barriers and fencing called for under the legislation.

Schumer said Trump would need support from top appropriators to shuffle funding, something he said was unlikely now that Democrats control the House.

Senate Appropriations Chairman Richard Shelby (R-Ala.) was more open to some maneuvering. "All presidents have done that in their time. ... As long as he is doing it within the confines of his constitutional duties, we'll go from there," he said.

Trump tweeted last night, "Was just presented the concept and parameters of the Border Security Deal by hard working Senator Richard Shelby. Looking over all aspects knowing that this will be hooked up with lots of money from other sources..."

The president said, "Will be getting almost $23 BILLION for Border Security. Regardless of Wall money, it is being built as we speak!"

Ins and outs

Even as appropriators finalized text, details trickled out about what had made it in, while there was some last-minute jockeying over adding tax provisions.

The legislation will carry the seven unfinished fiscal 2019 spending bills, which were negotiated at the end of the previous Congress. They have bipartisan support but were held up due to the border security impasse that sparked a 35-day partial government shutdown.

"My assumption is that this is just as we had negotiated it through" last year, said Sen. Lisa Murkowski (R-Alaska), the chairwoman of the Senate Interior-EPA Appropriations Subcommittee.

Among the unfinished bills are the Interior-EPA, Commerce-Justice-Science, State-Foreign Operations, Agriculture and Transportation-HUD funding measures.

The EPA-Interior bill is expected to provide small increases for fiscal 2019 and jettison controversial policy riders that had been pushed by House Republicans.

Absent from the agreement: disaster aid that has been widely sought to deal with an assortment of natural disasters during the past year, as well as a revival of lapsed energy tax extenders.

Sen. Patrick Leahy (D-Vt.), the ranking member on Appropriations, said yesterday that disaster aid will be handled separately, while Shelby said emergency funds would happen "sooner rather than later, the sooner the better."

Senate Finance Chairman Chuck Grassley (R-Iowa), who has been angling to see the tax extenders hitch a ride on the package, took to Twitter yesterday to urge their inclusion in the deal, which he noted wasn't written yet (*E&E Daily*, Feb. 6).

"Text of funding deal isn't finalized yet & conferees/leadership would be wise to add extension of tax credits that expired last yr," Grassley wrote. "Many jobs incl. in renewable fuels +railroad +others expected them & made investments based on implied promise they would happen again this time."

In a follow-up tweet, Grassley said House Democrats will shoulder the blame if the extenders have to wait.

"If House doesn't include in this deal then we will still work on getting them passed in the Senate ASAP but the Constitution says tax bills have to come from the House so Speaker Pelosi & House Dems bear ultimate responsibility for financial harm to these workers," he tweeted.

But Sen. Tom Carper (D-Del.), who sits on Finance and backs the extenders package, said he would oppose adding it to the spending deal because of fears it could complicate quick passage.

"That's a slippery slope," he told reporters. "If you wanted to do tax extenders, why not do X, Y and Z? There's a million other things people would like to have. We want to keep the government open, we want to have a reasonable plan that actually enhances border security and do our jobs."

Reporter Kellie Lunney contributed.

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Reuters

U.S. should have 'discretionary enforcement' of summer ban if E15 rule delayed: USDA official

https://www.reuters.com/article/us-usa-ethanol-idUSKCN1Q21WN

Jarrett Renshaw

ORLANDO, Florida (Reuters) - U.S. Department of Agriculture Deputy Secretary Stephen Censky said on Wednesday he is "hopeful" the administration will complete its rule allowing year-round sales of E15 gasoline by summer, but that the government should use "discretionary enforcement" of the E15 summertime ban if there is a delay.

"I see this as a fallback plan in the event we don't make the deadline," Censky said at a biofuel conference in Florida.

President Donald Trump announced in October he was directing the Environmental Protection Agency to allow year-round sales of E15, in a win for the powerful corn industry which supplies ethanol. E15 gasoline contains 15 percent ethanol, versus the 10 percent found in most U.S. gasoline.

E15 is currently banned for sale during summer over concerns it contributes to smog in warm temperatures, though recent studies have shown it may not perform much differently than E10 blends in that regard.

The EPA has said it is confident that it can complete its rule allowing year-round E15 sales by this summer, but the recent partial government shutdown in the United States has raised concerns of a time-squeeze because agency workers were furloughed for weeks.

Censky said at the conference that he blamed the potential for a delay to the E15 rule on the shutdown. He added that, if the rule is delayed, it would be up to the EPA to decide how to enforce the summer E15 ban.

(Reporting by Jarrett Renshaw; Writing by Richard Valdmanis; Editing by Andrea Ricci)

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E&E

Court tosses challenge to science advisers policy

https://www.eenews.net/eenewspm/2019/02/12/stories/1060120373
Ellen M. Gilmer

Then-EPA Administrator Scott Pruitt acted within his authority when he rewrote the rules for membership on the agency's advisory committees, a court ruled today.

The U.S. District Court for the District of Columbia dismissed a lawsuit from Physicians for Social Responsibility, a researcher and others opposed to the 2017 policy barring current recipients of EPA grants from serving on 22 powerful panels that guide the agency on a wide variety of environmental and public health issues.

Judge Trevor McFadden ruled that the policy change — opposed by those who say it unfairly limited the experts who can serve on the boards — was within the administrator's discretion.

"No doubt EPA aspires to recruit the 'most qualified' scientists and subject matter experts," he wrote, "but evaluating the relative qualifications of potential committee members is exactly the kind of discretionary decision making that is precluded from judicial review."

The boards affected include the Science Advisory Board and the Clean Air Scientific Advisory Committee.

Pruitt said he moved to limit participation to those without ties to agency grant money to prevent the appearance of interference. Critics argued the change was an effort to stack the boards with members favoring the Trump administration's deregulatory agenda (*Greenwire*, March 12, 2018).

"EPA and the public are losing some of the best scientific advice by excluding top scientists who receive EPA grants," Earthjustice attorney Patti Goldman, representing the plaintiffs, said in an emailed statement after today's ruling. The plaintiffs are considering an appeal.

EPA did not immediately respond to a request for comment.

Similar lawsuits are still pending in Massachusetts and New York.

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The Hill

Court tosses challenge to EPA's exclusion of certain scientists from advisory boards

https://thehill.com/policy/energy-environment/429681-court-tosses-challenge-to-epa-policy-excluding-some-scientists-from

By Timothy Cama

A federal judge Tuesday dismissed a lawsuit challenging the Environmental Protection Agency's (EPA) policy of removing scientists with EPA grants from its advisory boards.

Public health groups, led by Physicians for Responsible Medicine, and scientists who say the policy affected them, argued that then-EPA chief Scott Pruitt violated federal ethics standards in 2017 with his directive that people who receive EPA grants have to choose between grants and serving on advisory committees.

Judge Trevor McFadden, a Trump appointee to the District Court for the District of Columbia, said the law gives the EPA wide discretion when naming advisory board members.

The laws and regulations at issue "do not dictate whom administrators must, or even should, appoint to federal advisory committees," McFadden wrote in a Tuesday ruling dismissing the case.

"To say that certain individuals may not serve is very different than saying that the rest must serve," he wrote. "Agency heads retain substantial discretion to determine membership on federal advisory committees."

McFadden noted that ethics laws permit grant recipients to serve on the boards. But he said that is very different from mandating that they become members.

Barbara Gottlieb, director of the environment and health program at Physicians for Responsible Medicine, said she was disappointed by McFadden's ruling.

"This is an unfortunate decision. By depriving the EPA and the American people of top-quality scientific advice, it weakens the decisions the EPA makes, which means less protection for public health," she said in a statement.

Pruitt rolled out the policy in October 2017, arguing that serving on a committee like the Science Advisory Board would be a conflict of interest to someone receiving agency money to conduct scientific research.

"We want to ensure that there's integrity in the process, and that the scientists who are advising us are doing so with not any type of appearance of conflict," Pruitt said at the time. "And when you receive that much money ... there's a question that arises about independence."

Opponents, including academics and environmentalists, argued that Pruitt wanted to increase friendly representation from the fossil fuel industry and other Trump administration allies on the influential committees.

"Scott Pruitt doesn't want to listen to a word from anyone who isn't in the pocket of corporate polluters," Michael Brune, executive director of the Sierra Club, said at the time. "Of course Pruitt doesn't want to support science or hear from anyone who is respected in the scientific community, because science makes clear that Pruitt's policies are disastrous for the health of our kids and our communities."

Pruitt resigned in July 2018 amid growing ethics and spending scandals. Acting EPA Administrator Andrew Wheeler has retained the advisory board policy.

Since the policy took effect, representation for regulated industries and their allies has grown on the committees, at the expense of academics and researchers.

Wheeler named new members to the Science Advisory Board and subcommittees last month. The names include outspoken climate change skeptic John Christy and members who have done work on behalf of regulated industries.

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The Trump Administration Wants to Detain Migrant Kids at Toxic Waste Sites

https://rewire.news/article/2019/02/12/the-trump-administration-wants-to-detain-migrant-kids-at-toxic-waste-sites/

Tina Vasquez

Thousands of migrant children would be held "on top of and in close proximity to toxic waste sites" if the Trump administration gets its way.

UPDATE, February 12, 10:23 p.m.: A spokesperson at the U.S. Department of Health and Human Services told *Rewire.News* in an email on Tuesday evening that the Department of Defense properties at Fort Bliss and Goodfellow Air Force Base are not actively being considered for temporary housing at this time.

The Trump administration is moving forward with plans to detain as many as 7,500 unaccompanied migrant children "on top of and in close proximity to toxic waste sites," according to a new report.

In 2018, during the height of President Trump's family separation crisis at the U.S.-Mexico border, part of his broader "zero-tolerance" policy, the administration tasked the Department of Defense with identifying space in Texas to detain migrant kids. The federal government settled on two former military bases: Fort Bliss in El Paso and Goodfellow Air Force Base (GAFB) in San Angelo. "Toxic Cages," released today by the environmental law organization Earthjustice, is based on documents developed by the Air Force during various investigations under Superfund, an Environmental Protection Agency (EPA) program established in 1980 to clean up some of the nation's most contaminated land.

The report reveals Goodfellow Air Force Base is home to "numerous hazardous Superfund sites" that are "riddled with toxic hazards from past military operations, spills, storage of toxic chemicals, unexploded ordnances, and firing ranges." Most of these sites were never fully investigated or remediated.

Goodfellow Air Force Base is contaminated with lead, arsenic, and volatile organic compounds, or VOCs, "which contaminate the air and threaten human health through vapor intrusion causing nausea, headaches, and damage to the nervous system, kidney, and liver."

On a press call Tuesday, Earthjustice attorney Lisa Evans said the Trump administration's plan to use the Goodfellow Air Force Base to detain children is "dangerous, unconscionable, and devoid of concern for migrant children."

"A public vetting of the plan in compliance with the laws must be done before one child spends one night in these contaminated areas," Evans said.

Michelle Dobson, a staff scientist at Earthjustice, said very young children, including infants who may be detained at the facility, are the most vulnerable and susceptible to becoming ill because of the arduous journey they've taken migrating to the United States. The Trump administration separated hundreds of infants from their parents during the family separation policy. In June, the *Associated Press* reported that migrant newborns were detained in so-called tender age facilities.

There are four "suspended sites" near the Trump administration's proposed housing site at Goodfellow Air Force Base, including the proposed location of the residential housing for children, which will be on top of and adjacent to an old GAFB dump known as the Southeast Landfill. From 1970 to 1982, when there were almost no regulations for addressing spilled chemicals, GAFB dumped toxic chemicals, fuels, and other wastes in the landfill. GAFB completed a partial cleanup of the landfill, but it was never properly closed, according to today's EPA standards. The site is not considered a safe building site. There has been recent dumping along the landfill's perimeter that was never investigated.

A fuel storage facility on the property is another suspended site. In the 1980s, "extremely high levels of VOCs and other chemicals" were found near the facility, likely the result of "extensive chemical spills" that began in the 1950s. No studies related to long-term groundwater monitoring or indoor air quality were ever conducted.

The Obama administration in 2016 detained children on Fort Bliss in response to an unprecedented number of Central American migrants seeking asylum at the U.S.-Mexico border. Evans told *Rewire.News* that at the time, children were detained in military barracks, structures intended to house people.

"That's not what we're looking at in terms of the Trump proposal for Goodfellow," Evans said. "They will use previously and currently contaminated property to place temporary housing on top of."

The only hurdle keeping the Trump administration from moving forward with its plan to detain children on the toxic waste site is funding. According to Raul Garcia, former immigration attorney and senior legislative counsel at Earthjustice, the Department of Homeland Security has approved the Department of Defense's petition for the detention center, but there is a dispute over which agency should cover the cost of building and maintaining the facility. Garcia said this is relevant given Trump has threatened to declare a national emergency at the border in order to divert government funds to build his border wall.

"A national emergency would allow the administration to use funds directed for other reasons to be used for so-called border security, which would include funding for the detention center at Goodfellow. Construction could begin very quickly," Garcia said.

Members of Congress reportedly struck a deal Monday night to avoid another government shutdown. Central to the deal was the number of detention beds Immigration and Customs Enforcement (ICE) has to detain immigrants, according to *Bloomberg*. The White House has sought to increase the number of beds to 52,000, while Democrats wanted a reduction to 35,520. *Bloomberg* reported that under the tentative deal reached by congressional negotiators, the average daily cap would be 45,274 beds, though "Trump would retain authority to expand the number of beds by transferring money from other security accounts."

Garcia said he's concerned Trump will utilize funding to carry out the plan to build children's detention centers on toxic waste sites.

"If these plans go forward, approximately 7,500 migrant children will be detained in an area contaminated with lead, arsenic, benzene, PFAS, and myriad other harmful chemicals associated with increased risk of cancer and permanent neurodevelopmental damage," according to the report. "Essentially, instead of protecting children fleeing violence and extreme poverty, the government wants to detain them on top of a former landfill in a chemically polluted military base."

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