Message

**From**: Bahadori, Tina [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=7DA7967DCAFB4C5BBC39C666FEE31EC3-BAHADORI, TINA]
**Sent**: 12/28/2018 2:47:47 PM
**To**: vanDrunick, Suzanne [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4954f39d5bfa4c16a0ee0f8aed860580-vanDrunick, Suzanne]
**Subject**: FW: Daily Clips: 12/27/2018

A couple of interesting articles highlighted below for you.

**From:** Sauerhage, Maggie
**Sent:** Thursday, December 27, 2018 3:33 PM
**To:** AO OPA OMR CLIPS <AO_OPA_OMR_CLIPS@epa.gov>
**Subject:** Daily Clips: 12/27/2018

**Clean Air Act**
Greenwire: EPA defends decision to scrap 'once in' policy
Greenwire: EPA loses bid to dismiss states' suit on landfill emissions
Inside EPA: EPA Defends Decision To Scrap 'Once In, Always In' Air Toxics Rule Policy
Inside EPA: Extending Pause, D.C. Circuit Rejects Calls To Issue Merits Ruling In CPP Suit

**Chemicals**
CBS News: EPA still hasn't acted a year after proposing ban on deadly chemical methylene chloride
Inside EPA: Attorneys Query EPA's TSCA Prioritization Approach After Low Risk Finding
Inside EPA: EPA's Toxics Office Faces Difficulty Meeting TSCA's 'Challenging' Deadlines

**Environment**
The New York Times: 'This is our reality now.'

**IRIS**
Greenwire: Ex-Koch official steps away from formaldehyde study

**Oversight**
Bloomberg Environment: 2019 Outlook: House Democrats to Take Aggressive Oversight Course

**Shutdown**
Bloomberg Environment: EPA, Interior Mull Next Steps With No End in Sight for Shutdown
E&E News: EPA employee: 'Luckily, our mortgage is paid for January'
Greenwire: Hill in limbo as spending deal remains elusive
Montana Standard: EPA not affected by shutdown for now, but future uncertain

**WOTUS**
Greenwire: Trump's rule a wild card for Western water supplies

**Greenwire**
**EPA defends decision to scrap 'once in' policy**
https://www.eenews.net/greenwire/stories/1060110497/search?keyword=epa
**By Sean Reilly, E&E News reporter**
**12/26/2018**

In a new court filing, the Trump administration is mounting a two-tier defense of its decision to scrap a long-standing EPA air toxics policy.

Repeal of the "once in, always in" framework "does nothing more than reiterate" what the Clean Air Act already makes clear, EPA attorneys argued in a brief submitted Friday with the U.S. Court of Appeals for the District of Columbia Circuit. And because EPA air chief Bill Wehrum discarded the policy in a January guidance memorandum, that move is not a "final agency action" subject to judicial review, the attorneys added in urging the court to throw out lawsuits brought by the state of California and environmental groups.

The "once in, always in" policy dates back to 1995. It applied to chemical plants, paper mills and other "major" industrial pollution sources covered by maximum achievable control technology (MACT) standards because they annually release at least 10 tons of a single hazardous air pollutant or 25 tons of any combination of such pollutants. Until Wehrum scrapped it in January, the stringent MACT pollution control standards had stayed in place even if a particular plant's toxics releases fell below those thresholds. Now, facilities in that category are regulated as smaller "area sources" subject to more lenient requirements.

In his repeal memo, Wehrum wrote the revised interpretation was in line with lawmakers' intent in drawing that distinction in the Clean Air Act, an argument that EPA's lawyers took up in Friday's brief.

"Congress could have easily written a cut-off into the major and area source definitions," they said in the brief. "But Congress chose not to do so, and that choice reflects Congress' clear intent that those definitions be applied as written."

While environmental groups and California Attorney General Xavier Becerra (D) contend the practical impact of repeal will be more releases of mercury and other toxics into the air, critics have said the "once in, always in" policy effectively discouraged major polluters from curbing hazardous emissions.

Wehrum, who previously served as acting EPA air chief from 2005 to 2007, has spent the bulk of his career as an industry lawyer. This fall, the U.S. Chamber of Commerce and five trade groups signaled plans to intervene in the litigation on the side of the administration.

Furthermore, California and other states that disagree with EPA's reading of the major and area source definitions "are not compelled by the 2018 guidance to apply that reading" in the permitting process for individual plants, the agency said in Friday's brief. Should EPA seek to override state regulators' classification of a particular source, that decision would be open to a court challenge, according to the brief.

"In short, the 2018 guidance is not the final step here," the brief said.

In setting the 1995 "once in, always in," framework, also through a memo, a senior EPA air official at the time had described the policy as an attempt to prevent industry backsliding. During his earlier stint as acting EPA air chief, Wehrum had sought to repeal the policy via a formal rulemaking but was ultimately blocked by a Democratic-controlled Congress.

In the January memo, Wehrum wrote the repeal would ease regulatory burdens on businesses "while continuing to ensure stringent and effective controls on hazardous air pollutants." EPA also expected to "soon" take public comment on "adding regulatory text" to reflect its new interpretation, he wrote. Eleven months later, the agency has yet to do so, although the Friday brief reiterated plans to conduct "a notice-and-comment rulemaking."

Neither Wehrum nor EPA press aides replied to an email this morning asking whether the agency now has a firm timetable for proceeding.

**Greenwire**
**EPA loses bid to dismiss states' suit on landfill emissions**
https://www.eenews.net/greenwire/stories/1060110471/search?keyword=epa

**By Jeremy P. Jacobs, E&E News reporter**
**12/26/2018**

A federal judge has allowed a lawsuit from California and other states over EPA's failure to implement regulations limiting methane and other emissions from landfills to move forward.

The Trump administration had asked Judge Haywood Gilliam to dismiss the litigation from California and other states. Gilliam denied that motion Friday.

During the Obama administration, EPA promulgated a rule for emissions of a variety of pollutants from solid waste landfills in August 2016. It required states to submit implementation plans by May 2017. Landfills are the country's third-largest source of human-related emissions of methane, a potent heat-trapping gas.

Several states failed to file implementation plans, leading California, Illinois, Maryland, New Mexico, Oregon, Pennsylvania, Rhode Island and Vermont to sue in May.

They argued that under the Clean Air Act EPA must impose a federal program on states that were not in compliance and had failed to submit adequate plans.

EPA asked the court to dismiss the case, or at least put it on hold. The agency argued that it was working on a new rule, which it proposed Oct. 29 — a day before the hearing on the litigation was scheduled.

The new rule gives states more time to comply, pushing the deadline out to Aug. 29, 2019 (Greenwire, Oct. 29).

California Attorney General Xavier Becerra (D) applauded the order.

"[G]iven the role landfill emissions play in exacerbating climate change, EPA's ongoing efforts to delay implementation of these regulations is unacceptable," he said in a statement. "We look forward to holding the EPA accountable for its failure to perform its mandatory duties under the Clean Air Act, and for its unwillingness to protect public health."

**Inside EPA**
**EPA Defends Decision To Scrap 'Once In, Always In' Air Toxics Rule Policy**
https://insideepa.com/daily-news/epa-defends-decision-scrap-once-always-air-toxics-rule-policy
**By Stuart Parker**
**12/27/2018**

EPA in a new legal brief is defending its decision to scrap a long-running "once in, always in" policy that required "major" air toxics sources to always comply with rules for such sources even if they reduced emissions below the major source threshold, saying the Clean Air Act authorizes the decision and that it is not subject to judicial review.

Environmentalists and California are pursuing litigation in the U.S. Court of Appeals for the District of Columbia Circuit over EPA air chief Bill Wehrum's Jan. 25 memo scrapping the 1995 policy. Critics say it will spur increases in air toxics and contradicts years of Clean Air Act policy and agency practice.

But the Department of Justice (DOJ) on behalf of EPA in its Dec. 21 opening brief in California Communities Against Toxics, et al. v. EPA, et al. says the Wehrum memo amounts to non-binding guidance for states and EPA regions, and is not therefore "final agency action" subject to judicial review.

EPA's policy shift allows major air toxics sources -- those emitting 10 tons per year (tpy) of one hazardous air pollutant (HAP) or 25 tpy of a combination of HAPs -- to escape regulation under EPA's maximum achievable control technology (MACT) standards if they cut their emissions to below these thresholds. Sources would then become "area sources" subject to less-stringent regulation. Industry groups that lobbied for the change, such as the American Forest and Paper Association, say this is legal and a fair recognition of efforts to cut pollution.

But critics, including the groups suing and Democrats in Congress, say it will allow numerous sources to reduce their emissions to just below the thresholds and remove emissions controls, which will result in emissions rising, not falling. This, they argue, is contrary to the intent of Congress in the Clean Air Act.

In its brief, DOJ says that Wehrum's memo "merely communicates EPA's plain-language reading" of the air law, "which will, in turn, be applied in subsequent administrative actions -- it is neither a legislative rule that required notice and comment nor a final action subject to immediate judicial review."

Critics say that EPA violated air law procedural requirements to give notice and take public comment, but DOJ rejects this, saying the policy guidance is not subject to those mandates.

Nor can EPA's decision be considered final, DOJ argues. The guidance "is not the end of the Agency's decision-making process on this subject. The Agency is about to undertake a rulemaking addressing (among other things) the same interpretive issue presented here." EPA has announced its intent to craft a formal rule in 2019 based on the guidance, which will likely attract fresh legal challenges.

If the D.C. Circuit decides that Wehrum's memo can be considered a final agency action subject to judicial review, DOJ says the court should uphold the decision on its merits.

"Congress' definitions of 'major source' and 'area source' contain no cut-off date or other temporal language having a similar effect. They therefore do not permit EPA to bar regulated sources from reclassifying from 'major' to 'area' (or the other way around) after a certain point in time," DOJ says.

The department also says that claims EPA's decision will increase toxics emissions lack technical or legal support. "That conclusory claim lacks evidentiary support. In any event, Petitioners' contextual and policy arguments are misplaced where the statute speaks clearly."

The court has not yet scheduled oral argument in the case.

**Inside EPA**
**Extending Pause, D.C. Circuit Rejects Calls To Issue Merits Ruling In CPP Suit**
https://insideepa.com/daily-news/extending-pause-dc-circuit-rejects-calls-issue-merits-ruling-cpp-suit
**By Lee Logan**
**12/27/2018**

The U.S. Court of Appeals for the District of Columbia Circuit is rejecting calls by backers of the Obama-era Clean Power Plan (CPP) utility greenhouse gas rule to issue a decision on the merits in the long-paused litigation over the rule, and is instead continuing to hold the case in abeyance while the Trump EPA crafts its narrow replacement policy.

The D.C. Circuit's brief Dec. 21 per curiam order extends the court's practice of issuing 60-day abeyances in the original CPP litigation, West Virginia, et al. v. EPA, et al., which has now been on hold for nearly two years.

Of note, the opinion was joined by all of the D.C. Circuit judges participating in the case, even though some of the judges had earlier expressed unease with a continued abeyance, given that the underlying rule remains stayed by the Supreme Court pending resolution of the litigation.

That spurred states and environmental groups that support the CPP to aggressively urge the D.C. Circuit to rule on the merits of the challenge. The full court in September 2016 heard marathon oral arguments in the case, but it paused the suit shortly after the Trump administration took office and began reconsidering the rule.

Trump EPA officials have sought to extend the West Virginia abeyance as they develop their replacement rule, known as the Affordable Clean Energy (ACE) rule. The agency took comment on its proposed ACE plan through the end of October and has been on an aggressive schedule to finish the measure by March.

ACE has narrow GHG targets based on coal plant efficiency projects, compared with the CPP's more stringent requirements based on generation-shifting from coal to natural gas and renewables.

The D.C. Circuit's latest order is thus a win for EPA and a loss for environmentalists. It extends the pause in the suit until late February, requiring EPA to file status reports on ACE every 30 days.

CPP supporters were cautiously optimistic that the court would uphold the Obama-era rule, if it were to issue a merits ruling. Such a move would potentially force the high court to grapple with its underlying regulatory stay, and it could have briefly re-imposed the CPP's requirements on states and the power sector -- at least until the ACE rule is completed.

CPP proponents had argued that EPA has taken "undue advantage" of the abeyance and high court stay to avoid imposing GHG limits on the power sector, in violation of EPA's Clean Air Act duty.

But EPA said it was neither "flouting" a mandatory duty nor engaging in a "perpetual dodging" of judicial review.

Given the court's latest decision, it appears likely that the pause in West Virginia will extend until the agency finalizes ACE, meaning that an inevitable court fight would shift to a challenge to that rule.

**CBS News**
**EPA still hasn't acted a year after proposing ban on deadly chemical methylene chloride**
https://www.cbsnews.com/news/epa-still-hasnt-acted-a-year-after-proposing-ban-on-deadly-chemical-methylene-chloride/
**12/27/2018**

Many of America's largest retailers, including Amazon, are planning to stop selling all paint stripping products containing methylene chloride. Fifty-six people have died since 1980 from exposure to paint strippers containing the chemical and although the EPA proposed banning it in 2017, the agency has yet to take action.

CBS News correspondent Anna Werner has been investigating this story for the past year, reporting on three young men who died while using products made with methylene chloride since April 2017, and on a new, safer formula that's expected to be on the market in the U.S. soon.

This Christmas wasn't the same for Lauren Atkins. Last February, her 31-year-old son Joshua died while using paint stripper in a bathroom to refinish the fork from his BMX bike.

"He had a smile that lit the sky. He was very generous. He was very kindhearted," Atkins said. "I went up and knocked on the door and he didn't respond. So I opened the door and I found him."

Joshua had been gone for several hours.

"I was heartbroken because none of these deaths needed to occur. All of these were preventable," Lauren said.

Joshua joined victims Kevin Hartley and Drew Wynne, who both died in 2017 -- all young men who lost their lives using common strippers containing methylene chloride.

The chemical is so dangerous the EPA's own scientists decided it should be banned for all consumer and most professional uses, saying it posed an "unreasonable risk." But that was a year ago and the EPA still hasn't taken action. So Lauren Atkins and the other mothers plan to sue the agency next month.

"We've banded together and we're going to continue to be together until our voices are heard and until this is off the shelves," Lauren said.

The Environmental Defense Fund's Richard Dennison said those deaths were avoidable and the EPA must do more.

"It can't cut corners, It can't start creating loopholes that allow the industry to escape the intent of this rule, which is to ban these uses and protect consumers as well as workers. We are concerned that one corner they might cut is to try to exempt from this ban commercial uses of these chemicals," Dennison said.

But some aren't waiting for the government to act. Scientists at the University of Massachusetts Toxics Use Reduction Institute developed an alternative they say is safer and works just as well, and a Canadian company has announced it's producing a new product using that alternative formulation.

"The goal is to have it available in every major hardware paint and retail chain in the United States, Canada, and Mexico ... we feel it's a great option to have on the shelves of every retailer," said Greg Morose, a researcher at the institute, earlier this year.

In addition, major chains including Lowe's, Home Depot, Walmart and online retailer Amazon now say they will begin phasing out methylene chloride-based strippers by the end of the year. The changes should save lives

The primary manufacturer of the strippers with methylene chloride has been critical of the researchers' new alternative in the past. They point out it's flammable and say it too is toxic.

The researchers said the solvents in their formulation don't, "cause immediate death from high exposures" like methylene chloride can and that alone, they said, makes the new product much less hazardous. That product is expected to hit store shelves in the U.S. any day.

**Inside EPA**
**Attorneys Query EPA's TSCA Prioritization Approach After Low Risk Finding**
https://insideepa.com/daily-news/attorneys-query-epas-tsca-prioritization-approach-after-low-risk-finding
**By Maria Hegstad**
**12/27/2018**

Industry attorneys are questioning the prioritization approach EPA used to select the first 10 chemicals EPA is assessing as part of its new Toxic Substances Control Act (TSCA) program for existing chemicals, arguing that the selection of Pigment Violet 29 (PV29), which appears to be a low-risk chemical, begs the question of how it could be deemed a priority.

“It's rather puzzling this showed up on the [TSCA] work plan in the first place, it's supposed to be high-risk substances,” Herb Estreicher, a partner with Keller and Heckman, said during the law firm's Dec. 12 webinar. “It's rather puzzling to me this showed up . . . and of all the chemicals [on the work plan of roughly 90 substances], this was one of the [first] 10 that was picked” for evaluation by EPA.

EPA's recently released PV29 draft assessment is the first such assessment of an existing chemical under TSCA as revised by Congress in 2016. The chemical is included in the group of 10 that the Obama EPA selected shortly before leaving office that would be the first assessed under the new requirements of TSCA for existing chemicals, those that were on the market when the original TSCA took effect in 1976.

As directed in the revised statute, EPA selected the first 10 high priority chemicals for risk evaluation from its 2012 TSCA work plan, a list of roughly 90 existing chemicals created by the Obama EPA as it sought to more vigorously enforce existing TSCA in the face of longstanding inertia in Congress.

EPA used existing lists of toxic chemicals generated by other regulatory agencies combined with information about the chemicals' uses and children's and consumers' exposure to them to develop it.

EPA revised the work plan with updated information in 2014, resulting in a slightly shorter list of about 84 chemicals. The TSCA reform statute directs EPA to evaluate all the TSCA work plan chemicals over time, indicating that at least half of the new 20 chemicals that EPA begins assessing each year -- a quota also required by law -- must be drawn from the work plan list.

“The overall conclusion presents low hazard to human health and the environment,” Estreicher said of the PV29 draft assessment. “It's rather puzzling this chemical showed up on the 2012 work plan, survived the amended [2014] work plan, received a high score for aquatic toxicity -- [that] raises some question about the models that EPA used in the first place.”

The assessment seems likely to pose a test of the new law's data standards as environmentalists and others raised doubts last summer in comments on its planning documents that the agency has sufficient information to form the basis of EPA's conclusion that the substance does not pose an "unreasonable risk" to human health or the environment -- the legal test under TSCA for regulating chemicals.

Estreicher questioned this claim, arguing that TSCA, unlike the European chemicals management law Registration, Evaluation, Authorisation and Restriction of Chemicals (REACh), does not require the exhaustive generation of data on chemicals. “I don't understand why you need long term studies on every endpoint. . . . There is no indication this chemical is problematic. They seems to be arguing that this should be a REACH-type regime. I don't think there is justification for that,” Estreicher said.

“Picking this chemical, given this data set, the lack of any indication for hazard or significant exposure, is more problematic than whether this data set is complete,” Estreicher added.

'Good Opportunity'

Estreicher also criticized the assessment for not making use of non-traditional animal toxicology tests to address some of the data gaps. The reformed TSCA contains language encouraging EPA to use these nascent information sources, both with language requiring it to state its need for new vertebrate animal testing and by requiring EPA to craft a strategic plan on how to incorporate these non-traditional methods.

“This would have been a good opportunity for EPA to showcase the predictive power of non-animal [testing] methods. This would have been a good showcase, that in the absence of long term studies, you can make very valid predictions based on the models,” Estreicher said.

Noting that acting Administrator Andrew Wheeler has called EPA's publication of the PV29 assessment evidence of the agency meeting its responsibilities to meet the TSCA deadlines, Estreicher added, “They certainly issued the draft risk assessment. As far as I can tell, it's reasonable, there is no serious basis for concluding [PV29] poses a risk. But again, if one was going to demonstrate the agency met its promise, there should have been more in this assessment and I suggest the use and demonstration of non-animal methods.”

Environmentalists last week filed a Freedom Of Information Act (FOIA) request to force the agency to release two dozen studies that it relies on in the draft PV29 assessment, but which the agency has deemed as confidential business information (CBI) and withheld.

Six environmental groups in a Dec. 6 letter wrote to EPA that “failure to release these studies violates section 14 of [TSCA], reflects a troubling lack of transparency, and will frustrate the ability of interested parties to review and submit comments on the science EPA cites to support its risk evaluation and to participate meaningfully in the peer review process.”

The letter states that that 20 of the studies relied on in the assessment have been previously submitted to the European Chemicals Agency (ECHA) for compliance with REACh, with the remaining four "apparently submitted to EPA by an unnamed data owner." While the agency has released the "robust summaries" of the 20 studies that were submitted to ECHA, the environmentalists argue that TSCA requires the entire studies be made publicly available.

Estreicher finds the situation interesting, in part because it has long been unclear whether and when ECHA would release studies generated and paid for by industry -- often by consortia with complicated ownership -- to EPA.

“The REACh registrant is not the [sole] U.S. company that handles this chemical, so it's interesting that EPA received that information. It's very interesting that EPA required access to the full study reports,” Estreicher said. “There has been a lot of discussion about whether EPA would use the summary reports. They'll look at those, but only to decide if they need to full study. They got those, underwent systematic review, concluded those of medium or high quality.”

Estreicher also said ECHA's “dossier [on PV29 that] they replied on is undergoing a compliance review,” raising questions of why ECHA selected PV29 for such a review, what the result will be and “will it have any effect on [EPA's] review?”

**Inside EPA**
**EPA's Toxics Office Faces Difficulty Meeting TSCA's 'Challenging' Deadlines**
https://insideepa.com/daily-news/epas-toxics-office-faces-difficulty-meeting-tscas-challenging-deadlines
**By Maria Hegstad**
**12/27/2018**

EPA's toxics office is grappling with meeting a series of steep deadlines that lawmakers imposed when they revised the Toxic Substances Control Act (TSCA) in 2016, a top official says.

Work in the office “has been crazy,” Iris Camacho, branch chief of a Risk Assessment Division within the toxics office said during a Dec. 11 workshop at the National Academy of Sciences (NAS).

“It's challenging because there are very tight statutory deadlines and we are working very, very hard to meet our regulatory deadlines,” she added.

Camacho's branch is involved with assessments of existing chemicals, those that were on the market when the original TSCA took effect in 1976, or which EPA has since allowed to enter the marketplace. The group has been focused on the first 10 evaluations of existing chemicals, which the Obama EPA selected in December 2017, triggering a three-year statutory deadline for their completion.

“The first 10 chemicals we are trying to finalize the risk evaluations by December 2019,” Camacho said.

Camacho says that planning and scoping the risk assessments -- efforts which she said OPPT has long undertaken using guides from EPA's Risk Assessment Forum -- are “key because where we start talking about the TSCA uses, the uses define the exposure assessment.”

Camacho is referring to statutory language where a chemical's conditions of use are evaluated to determine whether they present an unreasonable risk to human health or the environment. If so, EPA must undertake risk management action to address those uses presenting such risk. Camacho explained that the evaluations are being designed to answer these questions specifically, by “understanding the life cycle of the chemical, what type of exposure pathways routes, receptors are related to those uses. And very importantly, the potentially exposed or susceptible populations, by law we have to consider these susceptible individuals.”

“It's very important to say under the TSCA program, fit for purpose will be the norm,” Camacho added. “The complexity of the analysis will be defined at that scoping step. . . . It's challenging particularly for the data rich chemicals you have to start prioritizing your references.”

Camacho also addressed OPPT's new white paper on systematic review, a process for gathering and evaluating scientific evidence to increase the rigor and transparency of chemical evaluations and the topic of the NAS workshop.

OPPT's approach has been criticized by some for its use of numerical scores to asses study quality. Camacho did not address that issue but she pointed out that use of such an approach is not required by the statute, but instead something "EPA felt was important."

"It's ambitious and I think we recognize this," she said. We are trying to make a process that is sustainable, that after a number of iterations and lessons learned, we can sustain this, because as you've heard from many speakers, it takes time."

Risk Evaluations

Camacho explained that the approach is still under development, "because we did not have time to have an a priori protocol. The 10 risk evaluations were announced in December and that started the clock. A lot of the method development takes time and we do not have that luxury. And that's why we have a document documenting what we have done at different stages of the process."

"Eventually we will compile this and have our own protocol," Camacho said. "It's a lot of work up front, but if you do it well, its going to pay off eventually."

The systematic review approach has come under criticism from environmentalists, some academics and Democrats, who charge that it removes studies from consideration. Senators sought commitments from EPA's toxics nominee to have the approach peer-reviewed by NAS.

EPA appears to have a different plan. The agency has included a charge question about its systematic review approach in its list of charge questions to its SACC, the new advisory committee to OPPT created by the reformed statue. The committee has been tasked with peer reviewing the first draft assessment OPPT has produced, of pigment violet 29.

The second charge question for the peer review asks advisors to "comment on the approaches and/or methods used to support and inform the gathering, screening, evaluation, and integration of information used in the draft risk evaluation. . . . Please also comment on the clarity of the information as presented related to systematic review and suggest improvements as warranted."

**The New York Times**
**'This is our reality now.'**
**https://www.nytimes.com/interactive/2018/12/26/us/politics/donald-trump-environmental-regulation.html?action=click&module=Top%20Stories&pgtype=Homepage**
**12/27/2018**

In just two years, President Trump has unleashed a regulatory rollback, lobbied for and cheered on by industry, with little parallel in the past half-century. Mr. Trump enthusiastically promotes the changes as creating jobs, freeing business from the shackles of government and helping the economy grow.

The trade-offs, while often out of public view, are real — frighteningly so, for some people — imperiling progress in cleaning up the air we breathe and the water we drink, and in some cases upending the very relationship with the environment around us.

Since Mr. Trump took office, his approach on the environment has been to neutralize the most rigorous Obama-era restrictions, nearly 80 of which have been blocked, delayed or targeted for repeal, according to an analysis of data by The New York Times.

With this running start, Mr. Trump is already on track to leave an indelible mark on the American landscape, even with a decline in some major pollutants from the ever-shrinking coal industry. While Washington has been consumed by

scandals surrounding the president's top officials on environmental policy — both the administrator of the Environmental Protection Agency and the Interior secretary have been driven from his cabinet — Mr. Trump's vision is taking root in places as diverse as rural California, urban Texas, West Virginian coal country and North Dakota's energy corridor.

While the Obama administration sought to tackle pollution problems in all four states and nationally, Mr. Trump's regulatory ambitions extend beyond Republican distaste for what they considered unilateral overreach by his Democratic predecessor; pursuing them in full force, Mr. Trump would shift the debate about the environment sharply in the direction of industry interests, further unraveling what had been, before the Obama administration, a loose bipartisan consensus dating in part to the Nixon administration.

In the words of Walter DeVille, who lives on the Fort Berthold Indian Reservation in North Dakota, "This is our reality now."

**THE CONTRIBUTORS**

Eric Lipton, a Pulitzer Prize recipient, has been at The New York Times since 1999. He covers Trump regulatory changes.

Steve Eder, a reporter who shared in the Pulitzer Prize this year, has worked at The Times since 2012. He writes about the federal government.

John Branch, a Pulitzer Prize-winning reporter, has been at The Times since 2005. He is based in California.

Gabriella Demczuk is a photographer and regular contributor to The Times, covering Washington politics and national policy.

Dismissing Science

**The president's distrust of expert studies and advice has put farm workers at risk in Kern County, Calif., where a pesticide the Obama administration moved to ban is still in widespread use.**

**By John Branch and Eric Lipton**

BAKERSFIELD, Calif. — The spring air was cool. There was the slightest breeze. The smell floated into the cabbage field about six weeks after the newly installed Trump administration brushed aside scientifically established health concerns and overturned a planned ban of one of the world's most potent pesticides.

It was the early morning of Cinco de Mayo — May 5, 2017 — but there was no day off on this holiday. In three groups, 48 farm workers, most of them women, were scattered around a field in the southern part of California's vast and flat Central Valley. Some did the back-aching work of bending over and using a knife to chop the heads from the plants. They passed them up to packers standing on a flatbed trailer behind a tractor.

Vicenta Rivera, now 49, was one of the first to feel it — a pesticide drift, the agriculture industry calls it, in this case of chlorpyrifos, one of the most powerful and toxic pesticides in widespread use, that had been sprayed on a nearby grove of mandarin oranges. There was a strong odor, a taste in the back of the throat, numb lips, itchy skin and watery eyes. A headache set in quickly.

Some workers scurried to nearby cars to avoid the toxic air. Others kept picking and packing, squinting and covering their faces and trying not to breathe. They were afraid of the repercussions of walking away. They needed the money. Women coughed. Some vomited.

Bricmary Lopez fainted. A 37-year-old mother of three, she remembers the smell, the dizziness, the overwhelming feeling of nausea. Other workers thought she was faking it, trying to be funny, when she hit the ground and started convulsing.

"We were teasing each other, saying, 'Ha, you don't want to work,'" said Lucia Martinez Polido, 57.

Reality bit. Soon, nearly everyone felt the burning sensation and queasiness. Some fainted. Those not immediately incapacitated helped the others. They put a pillow under Ms. Lopez's head and stood over her, waving their arms over her face, trying to offer fresh air.

Fire trucks and ambulances came. They stayed out on Copus Road, a couple of hundred yards beyond the cabbage field and adjacent almond groves, because the rescuers did not want to get exposed.

Ms. Lopez remembers being ushered behind curtains, a makeshift room assembled for roadside decontamination. She remembers being naked in a temporary shower, and the ambulance ride to a Bakersfield hospital, about 20 miles away.

Easing a 'War on Coal'

**Describing the previous administration as hostile to coal-burning plants, the E.P.A. reversed a rule that would have further improved the air in Texas.**

**By Eric Lipton**
THOMPSONS, Tex. — It is a once-common sight that is now less frequent: A mile-long freight train rolls up to a power plant in Texas — in this case, the W. A. Parish complex near Houston — and then slows to a crawl as its cars, each carrying 100 tons of coal, are tipped one at a time like child's toys to deliver their load.

Long reliant on coal as a major source of fuel for its electricity-generating plants, Texas is increasingly shifting to natural gas, wind and solar energy, prodded by the improving economics of these alternative sources and by tighter environmental regulation.

The change has brought a degree of progress in cleaning up the air. Two Texas coal-burning plants, targets of an Obama administration policy intended to curb harmful sulfur dioxide emissions, have closed this year. A third, which has supplied power to San Antonio since the 1970s, will be mothballed at the end of this month.

These Texas plants, and a fourth that closed this year, together produced 108,000 tons of sulfur dioxide in 2017, or 39 percent of the total state power plant emissions of the pollutant. That is an extraordinary decline in one year, and more than half of the 194,000-ton reduction called for in the Obama plan from late 2016.

A mile-long freight train that carries coal to the Parish plant.
But now, after years of policies that President Trump and others have derisively described as a "war on coal," the Trump administration has called a timeout on a costly mandate that would have ensured continued improvement in the region's air quality.

The administration's target has been an Obama-era rule that would have forced a group of coal-burning plants to install expensive scrubbers to cut sulfur dioxide discharges. For the owner of the W. A. Parish plant, NRG Energy, this would have meant either spending hundreds of millions of dollars to put in two of the huge devices, or shutting down the coal-burning operations there.

Before Scott Pruitt left his post as Mr. Trump's Environmental Protection Agency administrator, the agency notified NRG, as well as the owners of eight other Texas power plants, that the agency was no longer demanding the air pollution retrofits.

Instead, the agency is working out an industry-backed alternative that will require no immediate reductions in air pollution by the Texas plants still in operation.

The result, according to some of the United States' top air pollution experts, is measurable human and environmental costs.

Even with the recent shutdowns of coal-burning plants, Texas remains one of the top sources of sulfur dioxide emissions.

Every year that the W. A. Parish plant continues to operate as it has been, an estimated 180 people in Texas and surrounding states die prematurely, according to a recent study. Sulfur dioxide, colorless as it comes out of the smoke stacks, turns into tiny sulfate particles as it travels through the air — small enough to pass through the lungs and enter the bloodstream. These particles can cause aggravated asthma, heart and lung disease, and other serious health problems.

For Jennifer Cantu, who lives a few miles from W. A. Parish, the regulatory reversal is deeply personal. The plant pumped 37,649 tons of sulfur dioxide into the air last year, one of the highest levels among power plants in the United States.

"It is the kind of thing you don't think about at all — until you notice that ugly smell every once in a while," Ms. Cantu said. "And then you remember, 'There is that plant down there and I wonder: Should my daughters be playing outside?'"

The effects are not limited to the immediate area. Haze created by the plant's exhaust mars mountaintop views in national forests and wildlife areas, including Caney Creek hundreds of miles away in Arkansas.

No environmental issue has animated Mr. Trump more than coal. The president has often portrayed coal as the heart of a lost industrial glory he is determined to restore. And for political as well as economic reasons, he has sided regularly with the industry and users of coal, dismissing much existing environmental regulation as an unjustifiably expensive, job-killing intrusion on the American economy.

The administration said emissions of many pollutants declined in Mr. Trump's first year in office and that it expects the declines to continue. "Despite a misleading narrative, our air is getting cleaner," said James Hewitt, a spokesman for the E.P.A.

After decades of political, scientific and economic clashes over the issue, the trade-offs highlighted by Mr. Trump's policy shift in Texas raise a fundamental question: When it comes to the pace of environmental progress in the United States, when is enough enough?

Supporters of Mr. Trump's deregulatory philosophy believe that much of his predecessor's approach placed unjustifiable costs on companies and the economy. In Texas, the Obama administration relied on a rule governing haze in national parks to push through what critics said was an excessively expensive and unnecessary set of requirements to limit emissions from burning coal.

Texas officials and the power plant operators argue that Texas is much better off without the Obama-era mandate.

They dispute that the sulfur dioxide discharged from the W. A. Parish plant is a health threat, or a major cause of haze in national parks and wildlife areas, despite the conclusions of the Obama-era E.P.A. and certain environmentalists.

And more important, they say, the fact that power plants across Texas are cutting the overall amount of sulfur dioxide in the air at an even faster rate than the Obama E.P.A. had mandated — without being forced to make expensive upgrades — is proof that market forces are a better mechanism than the government for balancing the costs and benefits.

"All of this basically is a question of how quickly do you get the desired results," said David Knox, a spokesman at NRG, as he gave a walking tour of the sprawling plant.

Caney Creek

To discourage the use of coal and promote alternatives, the Obama administration was creative and aggressive in wielding the regulatory tools available to it. On the issue of power generation in Texas, in 2016 the administration employed what is known as the Regional Haze rule, which was intended to deal not with air quality or public health in the immediate vicinity of the power plants, but with the effects their emissions had on visibility in national parklands far downwind.

In this case, downwind included the Caney Creek Wilderness Area near Glenwood, Ark., 400 miles north of Houston.

At the OK Cafe in Glenwood on a recent Sunday, the hot topics included the slow start of the deer hunting season and an upcoming runoff election for local sheriff.

No one there had heard of the W. A. Parish plant. The Regional Haze rule was just as unfamiliar.

John Sorrells, a disabled saw mill operator, has seen traces of the haze in question while hunting in the area near Caney Creek. The haze moves in from the south and takes over the hillsides, hitting up against the mountains, which run east to west here.

"If the wind is blowing out of the south for five days or so, you will see it, especially in the summertime" Mr. Sorrells said. "It just covers the hills. It has got to be coming from somewhere."

The Regional Haze rule, which dates to the Clinton administration, has a goal of gradually cleaning up haze in 156 national parks and wildlife areas, including such landmarks as Yosemite, Yellowstone and the Grand Canyon.

Caney Creek, a pristine, 14,290-acre federally protected wilderness area on the southern edge of Arkansas' Ouachita National Forest, had its own visibility problems until that trend slowly started to turn around in the last decade. The improvement most likely accelerated this year, with the closing of several major coal-burning power plants in Texas. But the air clarity is still a long way from so-called natural conditions, when views can extend as far as 80 miles.

The W. A. Parish plant, a 2016 E.P.A. assessment found, was noticeably causing haze at Caney Creek 22 days a year, and was a contributing factor in haze there on a total of 54 days.

NRG called the E.P.A. calculations "fundamentally flawed," disputing that W. A. Parish affects visibility at Caney Creek. But the agency's findings gave the Obama administration legal justification to step in and propose mandating the installation of scrubbers on a power plant more than 400 miles away.

W. A. Parish

Hundreds of buttons, dials and gauges blink, buzz and slide in one of the control rooms at the W. A. Parish plant, the central nervous system of a 4,900-acre site that allows the crews to watch as coal is ignited by an enormous fireball inside the boiler.

The goal is to hit just the right temperature, about 3,000 degrees, as the steam generator turns turbines with so much power that the entire complex vibrates amid a deafening roar.

One of Parish's four coal-burning boilers already has a scrubber, which douses the emerging exhaust with a mixture of water and limestone, extracting most of the sulfur dioxide. But the other three coal-burning units have no scrubber.

Parish's control room monitors demonstrate in real time the difference a scrubber can make: The unit that has one was discharging 272 pounds of sulfur dioxide per hour from the 500-foot smokestacks. A separate unit with no scrubber was pumping out 3,250 pounds per hour.

Stephen Hedge, the Parish plant's manager, said it had already invested a tremendous amount into cleaning up its air discharges.

"We have got a lot of environmental controls on these plants," he said, detailing past efforts at Parish to significantly cut pollutants such as nitrogen oxide and mercury.

Most significant, NRG in 2016 completed a $1 billion project — the largest of its kind in the world — that curbs the impact the plant has on climate change. Equipment collects some of the carbon dioxide generated by one of the four coal-burning units so it can be reused by injecting it into the ground to increase oil and gas production at nearby well sites.

In the debate over how much more money should be spent to protect the environment, Texas residents have much at stake, said Daniel Cohan, an associate professor of environmental engineering at Rice University in Houston, and George D. Thurston, a professor of environmental medicine at New York University.

Mr. Cohan estimated in a study published in October that Parish causes 180 premature deaths a year, based on a detailed analysis of emissions from the plant in the summer of 2015. An estimated 120 of those premature deaths would be avoided if scrubbers were installed on the plant as the Obama administration proposed, Mr. Cohan said.

Dr. Thurston produced his own study that examined the health benefits of the Obama plan in greater detail.

Lowering emissions at nine Texas power plants targeted by the Obama-era E.P.A., including Parish, would mean 1,300 fewer cases a year of acute bronchitis, as well as about 100,000 fewer lost workdays from related illnesses and 125 fewer admissions a year to area hospitals for heart conditions, he concluded.

Hoping to drive home the point to Mr. Pruitt, the former E.P.A. head, who is from Oklahoma, Dr. Thurston prepared a summary showing how the Obama policies would also benefit Oklahoma residents, given that air pollution from Texas often blows in that direction.

The bottom line: Hundreds fewer Oklahomans would die prematurely each year, according to a chart that Dr. Thurston passed to Mr. Pruitt during a June 2017 meeting, where Dr. Thurston and other public health experts urged Mr. Pruitt not to reverse the Obama administration's proposed order demanding plant upgrades under the Regional Haze rule.

"People in your own state won't get these health benefits from cleaner air if you don't follow through on this," Dr. Thurston said he told Mr. Pruitt.

Mr. Pruitt's response, Dr. Thurston said, was blunt.

"This is a visibility rule," Mr. Pruitt said. "Therefore the health impacts are irrelevant."

The agency a few months later notified Texas that it was rejecting the Obama-era proposal. W. A. Parish and the eight other coal-burning plants in Texas would no longer face specific orders mandating air pollution upgrades.

Environmental groups sued late last year to try to block the rollback. But even while this lawsuit has been pending, coal-burning power plants in the state have been shutting down for reasons beyond the potential costs of complying with the Obama policy.

Allan Koenig, a vice president at Vistra Energy, which owns three of the coal-burning plants that have shut down in Texas this year, said his company was shifting to energy generated by renewable sources, such as a solar plant in West Texas that came online this year.

"This is what our customers want," he said. "So a lot of this is taking place already."

But the progress that has been made, while considerable, is still far short of what the Obama-era E.P.A. sought.

And even after subtracting the emissions from the Texas coal-burning plants that closed this year, the state remains the top source of sulfur dioxide releases in the country. The 26 states with the lowest sulfur dioxide emissions from power plants — a list that includes California and New York — collectively produced 157,000 tons in 2016. That is less than Texas is still generating on its own, E.P.A. data suggests.

Installing the scrubbers on the six remaining Texas power plants targeted by the Obama administration, including Parish, would mean 11,400 fewer cases a year of asthma attacks spread across 14 states, according to Dr. Thurston's calculations. It would also mean 600 fewer cases of acute bronchitis, about 40 fewer nonfatal heart attacks and about 310 fewer premature deaths every year.

What these numbers suggest, Mr. Cohan said, is that now is not the time to stop.

"Just because the water is getting cleaner does not mean we should not stop the industry from dumping huge amounts of hazardous waste in our rivers and lakes," he said. "Just because cars are getting cleaner does not mean we should not regulate the dirtiest cars and trucks on the road. It is the same thing with coal-burning plants like Parish. Sure, they are cleaner than they used to be. But they are still not clean enough."

**THE REGULATION** The Environmental Protection Agency proposed in late 2016 that nine Texas coal-burning power plants upgrade pollution controls to reduce haze in nearby national parks and wilderness areas. The E.P.A. estimated that the move would cut sulfur dioxide pollution by 194,000 tons per year. It would also reduce the risk of heart and respiratory conditions for Texans and for people in nearby states.

**THE ROLLBACK** The Trump administration decided in October 2017 to reverse that plan and allow the state and its utilities to come up with their own plan to reduce the haze.

**THE CONSEQUENCES** Even without enforcement of the Obama-era plan, three of the nine targeted coal-burning power plants are shutting down this year, resulting in more than half of the reduction in sulfur dioxide the Obama administration wanted. It is unclear whether the rest of the reduction will happen, however, since the remaining plants are not required to install or upgrade scrubbers that can cost hundreds of millions of dollars each.
Sidestepping Protections

**Decades of cooperation in Congress helped a polluted river in West Virginia. Now rigorous restrictions from the Obama era are being blocked, delayed or killed.**

**By Steve Eder and Eric Lipton**
CHARLESTON, W.Va. — The Kanawha River has never been clean, at least not since Colleen Anderson moved here nearly 50 years ago.

The river is lined with so many chemical facilities that the area where the Kanawha cuts through the Charleston region is known as Chemical Valley. One town, Nitro, even gets its name from a chemical — the nitrocellulose produced there for explosives.

In the 1980s, Ms. Anderson recalls, swimmers competing during an annual waterfront festival would enter the river with bright white swim caps, only to see them stained a murky brown.

"It's a beautiful river," she said. "You just don't want to fall in."

In fits and starts, the Kanawha has gotten the attention of environmentalists and federal officials concerned about water quality. Beginning in the 1960s, both Republican and Democratic administrations in Washington made strides to restore polluted rivers across the country, including the Kanawha, the largest inland waterway in West Virginia.

Last year, there were even academic papers drawn up to make the Kanawha more desirable for swimming and fishing over the next two decades, building on an aggressive push during the Obama administration to reduce fecal bacteria, industrial pollution and heavy metals in the river.

But the environmental crackdown hit the chemical and coal industries hard, and they resisted much of it. Since the election of President Trump, the most rigorous Obama-era restrictions have been blocked, delayed or killed, allowing many industries along the Kanawha and its tributaries to sidestep some cleanup and protection efforts.

The operator of the state's largest power plant, which towers over the Kanawha about 20 miles downstream from here, has stopped design work on a water treatment system that would have removed most of the remaining pollutants — like arsenic, mercury and selenium — from discharges into coal ash ponds and the river.

And coal-mining companies are off the hook for needing to step up protections on hundreds of miles of streams and rivers in the Appalachian Basin, which includes the Kanawha. Republicans in Congress, with the support of several Democrats, repealed a rule last year curtailing mining practices that threatened streams and forests.

Profiting, at a Cost

**The flaring of natural gas fouls the air in North Dakota, demonstrating a trade-off between short-term economic gains and long-term environmental damage.**

**By Eric Lipton**

FORT BERTHOLD, N.D. — In late June, a specially equipped truck from the Environmental Protection Agency drove through the Fort Berthold Indian Reservation to examine air hazards. What it found was sobering.

Among the risks, according to confidential copies of inspection reportsobtained by The New York Times, were plumes of improperly burned methane from oil wells.

One flare that was supposed to be burning gas was not lighted, allowing raw methane to spew into the air. In other spots, waves of benzene, a cancer-causing chemical, were leaking at high levels from a storage tank.

Those hazards and others were not shared with Fort Berthold's residents at a time when energy production in the region is booming. But the findings underscored the risks involved in the Trump administration's decision to reverse a rule curbing leaks and flaring, both of which pose dangers and are increasingly common on federal and Indian lands across the West.

Like other communities around the country, Fort Berthold is confronting a tension at the heart of Mr. Trump's unrelenting push to roll back regulations governing a range of industries: Cutting the costs associated with environmental protection can generate substantial short-term economic gains while producing longer-term and potentially profound health and environmental effects.

The Flaming Landscape

A 75 percent surge in oil production in the past two years has left Fort Berthold lighted by towering shafts of flame. Hundreds of controlled flares burn so bright in the cold night air that the sky turns a weird orange yellow, even as snow falls onto the frozen ground.

An estimated three billion cubic feet of gas is burned or released each month here — a volume that could heat about 600,000 homes. Energy companies have figured out a way to capture the oil, but their pipelines are not big enough to handle all the less valuable gas that comes out of the ground. Much of the excess is torched.

As oil and gas operations have intensified in this isolated stretch of North Dakota, so have residents' concerns. The venting of unburned methane fouls the air with chemicals that are not only in some cases carcinogenic but over the next 100 years will be 30 times as potent a cause of global warming as carbon dioxide. At the same time, the improper burning of methane can create pollutants that cause a variety of respiratory problems.

"My children and grandchildren breathe in this air," said Lisa DeVille, whose family has lived on the reservation for generations. "How is this going to affect our health?"

Ms. DeVille and her husband, Walter, are members of the Mandan, Hidatsa and Arikara Nation, the group of tribes living at Fort Berthold. She said they learned last year that she had a respiratory condition that her doctor compared to symptoms common among oil field workers. She called it Bakken cough, after the geological formation that is yielding so much oil and gas in the Dakotas and Montana.

The Obama administration, concerned about the effects on health and global warming as well as the wasteful practice of simply burning off energy, moved to curtail leaks and flaring on federal lands and Indian reservations. But in September, under pressure from the energy industry, President Trump's Interior Department eliminated the rule's most important provisions.

The move was in keeping with Mr. Trump's effort to cut regulatory costs for industry and promote domestic energy production. And it will help protect a remarkable economic boom on this once-impoverished reservation, where the tribal government's budget — 90 percent of which comes from energy-related sources — has surged over the past 15 years to $330 million from $20 million.

Tribal leaders and state officials here say they are committed to using their regulatory powers to try to confront the flaring and leaks. But in an interview last month, the top tribal oil and gas regulator, Carson Hood Jr., acknowledged that he had no plans to cut production until pipelines could be built to handle all the excess gas. That means the intense flaring will probably continue for at least several years, or until the boom in oil drilling subsides.

And the state, which has its own flaring rules, recently moved to reconsider them, as it does not want to chase away any new investment by oil and gas companies, which fuel the state's economy.

The leaks and flaring are an increasing source of tension at Fort Berthold. Many are focused on the cash from the energy industry that is pouring into community and tribal government coffers. The tribes and some families are paid royalties for each barrel of oil pulled from the ground, revenue that has changed many lives for the better.

"Sovereignty by the barrel," is the slogan used by the M.H.A. Nation's Energy Division, which both regulates and promotes oil and gas drilling here.

Yet others are backing a lawsuit challenging Mr. Trump's rollback of the federal rule, while also pressing tribal leaders to move aggressively on their own to confront the consequences of the burning and leaking of gas.

"This is not just an empty worry — this is very real worry," said Joletta Bird Bear, whose family collects oil production royalties but is pushing for greater regulations on reservation. "All you have to do is look around and you can see for yourself, the flares burning. They are huge. This is going to impact human life."

An Upsurge of Wealth

The DeVilles set out for a drive through the Mandaree neighborhood of Fort Berthold to show off both the benefits and the costs that fracking has brought this tiny town.

Oil revenues allowed the M.H.A. Nation to expand its elementary school. The tribes built an elaborate staging area for their annual summertime powwow, which draws hundreds of dancers and drum groups from around the United States and Canada.

Even the car the DeVilles used to cruise through their hometown — a 2019 Toyota Sequoia S.U.V. — comes in part from industry money, as Lisa's mother receives large royalty payments from production on the land she owns, wealth she uses to help support her family.

Besides royalties, residents also receive disbursement checks cut from the oil and gas money the tribal government collects. Some 16,500 members received $3,000 each last year.

But these benefits often have serious costs. Funding for an early-childhood learning center came from a $1 million donation made by a pipeline company, Crestwood, after it was blamed for spilling more than a million gallons of fracking wastewater. The spill reached the lake that supplies the reservation's drinking water.

"I am not against oil and gas — my family benefits too," Ms. DeVille said. "I just want the industry to held accountable for impacts they are causing here. What are you going to tell your children's children: 'I am sorry I took the money, and so now you don't have clean air and clean land and clean water to live'?"

The intensity of the flaring — which has surged on Fort Berthold since 2016 — is on display across the reservation, where flares burn with so much power that they sound almost like jet engines. In warmer months, wheat fields need to be sprayed with water so the intense heat does not light them on fire.

A larger share of gas is flared in Fort Berthold than almost anywhere else in the United States. There is a severe shortage of pipelines and processing plants in the area, driving the need to burn. But it is more than just a matter of flames licking the sky.

The Denver-based team from the E.P.A. that visited in June came with infrared cameras, air monitors and a GPS tool that tracked toxic chemical releases. Its findings demonstrated that flaring, which can be unhealthy on its own, was often just a hint of even more harmful gas leaks. Venting can release a variety of pollutants into the air, including volatile organic compounds like ethylbenzene, a possible carcinogen, and toluene, a neurotoxin that may result in birth defects. The compounds also are a factor in the formation of ozone, which can lead to asthma and heart attacks.

The Polluted Air

Companies are required to notify the Interior Department when they are flaring methane beyond the start-up of a well. In 2005, the agency received only 50 applications for extended flaring. By 2014, the number had jumped to 1,250. The Interior Department did not respond when asked how many wells on federal and Indian lands flared in 2018.

As part of a broad strategy to slow climate change and also reduce wasteful burning of natural gas that if captured could be sold, the Obama administration adopted a rule in 2016 that put legal limits on the amount of flaring and leaking. The caps would have gotten tighter each year until 2026, when 98 percent of all gas produced on federal lands and Indian reservations was to be captured.

About 70 percent of the gas produced each month on the reservation is captured, according to the state, while the remainder is burned, leaked or intentionally vented. That means operators on Fort Berthold would probably have been targeted for enforcement if the rule had remained in effect.

The rule also required companies to perform semiannual inspections of their equipment on Indian reservations and federal lands to ensure there were no leaks, and to repair any within 30 days.

Moreover, it forced companies to get ahead of the leaks by replacing so-called high-bleed pneumatic controllers, designed to release pressure by letting gas leak, with low-bleed devices.

The E.P.A. estimated that the rule would reduce venting and leaks by 35 percent and flaring by 49 percent within a decade — while also saving enough natural gas nationwide to supply about 740,000 homes a year.

But it was only a matter of days after this rule was finalized that the campaign to kill it began. North Dakota joined with an oil and gas trade group and other states to sue the Interior Department, claiming the federal government was overstepping its authority and creating unnecessary regulations given state limits on flaring.

The Freedom Partners Chamber of Commerce, a conservative advocacy group affiliated with Charles G. and David H. Koch, followed up by asking Congress to scrap the rule, an effort that fell short by two votes when Senator John McCain of Arizona and two other Republicans opposed the repeal.

"Improving the control of methane emissions is an important public health and air quality issue," Mr. McCain said, explaining his decision.

Once in power, the Trump administration moved on its own to postpone the rule, an act that a federal judge blocked after noting that Interior Secretary Ryan Zinke had "entirely failed to consider the benefits of the rule, such as decreased resource waste, air pollution and enhanced public revenues."

Undeterred, the Interior Department moved again to remove most of the important provisions, a process it completed in September. Yet even then, the Trump administration, in formal rule-making documents, acknowledged that its actions would come with considerable costs.

Most notably, it estimated that an extra 299 billion cubic feet of natural gas would now be vented or flared over the next decade, a chunk of it at Fort Berthold.

A Tide of Change

The story of oil and gas at Fort Berthold, in a way, is the story of a long-delayed payback for injustices experienced by the three affiliated tribes that call Fort Berthold their home.

Their ancestors controlled vast swaths of the West. But they were assembled here on this North Dakotan land by the United States government in the 1870s, an area that a tribal history described as being known for its "unproductive soil, unfriendly climate, scant supply of wood, poor water, high winds, dust, drought, frost, flood, grasshoppers."

The plight grew even more extreme by the 1950s when the United States government built a dam on the Missouri River, which splits Fort Berthold in two. The project flooded the center of the reservation and its most fertile lands, forcing most of the residents to relocate.

But there was a secret lurking here deep underground — a formation of oil and gas called the Bakken. When new drilling technologies emerged about a decade ago, they transformed Fort Berthold into one of the hottest spots in the world for energy production.

"Without choice, we were stuck here by the government," said Mr. Hood, the director of the M.H.A. Nation's Energy Division. "Lo and behold, we were put on top of one of the richest natural resources in North America. We end up being in a very lucrative position."

This explains, in part, why some tribal leaders are pleased that the Trump administration has repealed most of the Obama Administration's gas rule. The Interior Department is now telling the M.H.A. Nation that it will be allowed to decide on its own how it wants to regulate methane flaring and venting.

But Mr. Hood said that some kind of action was needed.

"I got some flaring going on over here, and I got some flaring going on over there that you can't see at the moment," Mr. Carson said, pointing in just about every direction visible from his office window.

"It is really a big concern for us as a nation," he said, "having to breath this methane, benzene, all those dangerous elements that are in the natural gas itself. I really want to do the best that I can to protect the air for our people."

Mr. Hood's solution, as well as that of the chairman of the tribe, Mark N. Fox, is to encourage the construction of pipelines and processing plants near or on the reservation to capture and ship out the gas — a process that could take years, and hit a wall if oil prices fall.

The tribes, Mr. Hood said, have also focused on trying to curb venting, the most harmful way to dispose of the unwanted gas, by sending a compliance officer to oil and gas sites with an infrared camera that can detect the emissions. But when pressed to detail how that effort was proceeding — and how much in fines his office had imposed for the widespread violations — Mr. Hood said he would not discuss the matter.

Back in Washington, the Trump-era E.P.A. is now moving to weaken its own rule limiting harmful methane gas releases on new well sites nationwide.

"We are sort of powerless — this is our reality," said Mr. DeVille as he and his wife completed their drive though the most intense Fort Berthold flaring zones. "This is our reality now."

**THE REGULATION** After years of debate, the Interior Department in late 2016 put new limits on the flaring of natural gas produced on federal or Indian lands. When the gas is burned, it is wasted, and when it is burned improperly, it can cause respiratory problems.

The leaking of that gas is also harmful, and is a major contributor to climate change. The chemicals are in some cases carcinogens, while air pollution associated with the releases can lead to asthma and even heart attacks.

Starting in 2018, producers were required under the rule to capture 85 percent of the gas, with that number jumping to 98 percent by 2026. The Interior Department estimated that this would save 41 billion cubic feet of gas a year — enough to supply about 740,000 households.

**THE ROLLBACK** In September 2018, after complaints from the oil and gas industry, the department reversed the flaring limits, arguing that state governments and Indian tribes could impose their own.

**THE CONSEQUENCES** The Trump administration acknowledged that 299 billion cubic feet of gas would be lost, through venting or flaring, over the coming decade as a result of the changes.

**Greenwire**
**Ex-Koch official steps away from formaldehyde study**
https://www.eenews.net/greenwire/stories/1060110585/
**By Kevin Bogardus, E&E News reporter**
**12/27/2018**

David Dunlap, a political deputy in EPA's research office and a former Koch Industries Inc. official, won't take part in the agency's heavily scrutinized review of formaldehyde.

He said in his recusal statement obtained by E&E News under the Freedom of Information Act that he had chosen not to participate in any matters related to EPA's Integrated Risk Information System assessment of formaldehyde. In the draft form of that review, the agency allegedly found the chemical could cause certain cancers, including leukemia.

Further, Dunlap, who serves as EPA's deputy assistant administrator for research and development, said he would not be involved in the assessment during his entire time at the agency.

"Although not necessarily required, I am voluntarily recusing myself from participation in any matters related to the formaldehyde IRIS assessment for the duration of my EPA tenure in order to avoid the appearance of any ethical concerns in my role as Deputy Assistant Administrator," Dunlap said in his recusal, dated Dec. 19.

Asked why Dunlap recused himself from the formaldehyde review, EPA spokesman John Konkus referred E&E News to Dunlap's work on the chemical before joining the agency.

"Because of his previous private-sector work on this issue and as his recusal statement indicates, Mr. Dunlap has voluntarily recused himself from EPA's Integrated Risk Information System assessment on formaldehyde," Konkus said.

Before joining EPA this fall, Dunlap spent more than eight years at Koch Industries. As director of policy and regulatory affairs, he was the lead expert on water and chemicals and worked with "the entire suite of Koch Companies," providing his expertise on everything from petrochemicals to paper, according to his LinkedIn profile.

Koch, through its subsidiary Georgia-Pacific Chemicals LLC, is one of the country's largest producers of formaldehyde. The company, known for brothers Charles and David Koch and their financial support of conservative causes, often pushes back against government regulation.

Formaldehyde is a common chemical that is used in wood products and building materials as well as paper and fertilizers. The chemical is also a global industry with millions of dollars at stake in its regulation.

Jennifer McPartland, a senior scientist at the Environmental Defense Fund, said it was right for Dunlap to recuse himself from EPA's formaldehyde review.

"Regarding the voluntary recusal, it is entirely appropriate. Frankly, I'm shocked that it is voluntary given his role as director of policy and regulatory affairs for Koch Industries," McPartland said.

"Koch has had a long history of downplaying the health risks of formaldehyde, particularly through its subsidiary, Georgia-Pacific, who is a major producer of formaldehyde," she added.

The company was described as an "initial member" of the American Chemistry Council's Formaldehyde Panel, according to a 2010 press release. The panel, one of the more vocal groups on EPA's IRIS review of formaldehyde, has disputed that the chemical causes leukemia and has met regularly with the agency, according to a spokeswoman (E&E News PM, May 18).

Dunlap himself has been involved with the group.

"Mr. Dunlap participated as a representative of a member of the ACC Formaldehyde Panel," Kimberly White, senior director of the ACC's chemicals products and technology division, said in responses shared with E&E News. The panel represents formaldehyde producers, suppliers and users, as well as trade associations associated with the chemical, according to White.

Asked for the panel's position on the EPA's formaldehyde review, White said the group supports "a science-based process" to assess formaldehyde.

"The published and peer reviewed scientific evidence clearly demonstrates there are safe thresholds for formaldehyde exposure that have been utilized and adopted by international bodies," White said.

Meanwhile, Democratic senators over the past year have pushed EPA to advance its formaldehyde review.

In a letter this May, Sens. Ed Markey of Massachusetts, Sheldon Whitehouse of Rhode Island and Tom Carper of Delaware said they understood that EPA had completed the draft IRIS assessment in the fall of 2017. They raised concerns that the review had since been stalled at EPA under pressure from political appointees and industry interests, including ACC.

The senators also said in their letter that they understand that EPA's draft review found formaldehyde to be "carcinogenic" with evidence of "nasopharyngeal cancer" and leukemia.

They are still calling for the agency to move the formaldehyde assessment. In a statement earlier this month, Markey said EPA should release its findings on the chemical.

"The EPA has succumbed to pressure from industry for far too long, endangering the public's health. I urge the EPA to ensure that there are no more efforts to delay or block the publication of this assessment," Markey said.

McPartland said EPA's formaldehyde assessment is only at the beginning of a long process as it is reviewed by several parties in and outside the agency.

"There are a series of steps that this assessment needs to take and the political leadership is not even allowing the assessment to take the next step, which is an intra-agency review, and then there would be an inter-agency review, and then peer review and so on," she said.

In his recusal, Dunlap also promised to avoid "any particular matter" while at EPA involving his former employer Koch to stay in line with President Trump's ethics pledge. That recusal will last until September 2020, which is two years from when he joined the agency.

Dunlap could, however, participate in meetings with Koch officials, as long they were focused on matters of "general applicability" and were open to five or more parties "who represent a diversity of interests," according to his recusal.

He also said he would not participate in matters that affect Sanofi SA, his spouse's employer, as well as the pharmaceutical sector while at EPA.

To help Dunlap stay true to his recusal, Elizabeth Blackburn, chief of staff for EPA's research office, will screen relevant matters. He also promised to update his recusal if there are any changes in his financial interests or business relationships.

**Bloomberg Environment**
**2019 Outlook: House Democrats to Take Aggressive Oversight Course**
https://news.bloombergenvironment.com/environment-and-energy/2019-outlook-house-democrats-to-take-aggressive-oversight-course
**By Dean Scott**
**12/27/2018**

House Democrats will return to power in 2019 united on the need for intensive oversight of the Trump administration.

The Democrats intend to throw the spotlight on the Environmental Protection Agency, Energy Department, and other Trump administration agencies that got little scrutiny by a Republican-controlled Congress over the last two years.

With GOP control of the Senate and President Donald Trump in the White House, incremental environmental legislation in general is likely to supersede broader initiatives.

On chemical policy, expect incoming House Energy and Commerce Chairman Frank Pallone (D-N.J.) to push the EPA to step up implementation of chemical reviews under the Toxic Substances Control Act, which Congress amended in 2016.

Pallone's panel could also take up measures that might force the EPA to move faster on setting standards for synthetic contaminants in drinking water, such as perfluorinated chemicals found in Teflon or the rocket fuel component perchlorate.

The Democratic-run House is also likely to bring more pressure to increase funding for water infrastructure projects. Incoming House Transportation and Infrastructure Committee Chairman Peter DeFazio (D-Ore.), who has complained of inadequate funding for water projects, could push for bills to dramatically increase funding there.

'Revenge Majority'
"At some level, a Kierkegaardian dread must be settling in at EPA," Lynn L. Bergeson, managing partner with Bergeson & Campbell P.C., told Bloomberg Environment, referring to Soren Kierkegaard, the Danish thinker considered the first existentialist philosopher. While hearings "are inevitable, their content and their ultimate purpose and utility are another matter," she said.

Some Republicans are skeptical that Democrats will use their majority power constructively.

"The way I look at the House is, they are planning on a revenge majority," Sen. Cory Gardner, R-Colo., who chairs the Senate Energy and Natural Resources Committee's energy panel, told Bloomberg Environment.

Democratic control of the House also will all but collapse GOP-led efforts to add environmental policy riders to appropriations bills, with Rep. Nita Lowey (D-N.Y.), an environmental advocate, at the helm of the powerful House Appropriations panel.

Rep. Eddie Bernice Johnson (D-Texas) also is vowing to bring science back to the House Science, Space and Technology panel as its next chairman, ending Republican control of a committee that has often been more concerned with how regulations are hurting industry.

On climate change, the House Energy and Commerce Committee—along with panels on science, transportation, oversight and government affairs, and even foreign affairs—all expect to grill Trump officials on rollbacks of climate and other environmental rules and international climate policy.

Issues to Watch
Other environment and energy issues to watch on Capitol Hill in 2019 include:

A large infrastructure bill, an issue on which lawmakers in both parties, as well as Trump, see room for a possible compromise. Senate Minority Leader Chuck Schumer (D-N.Y.), however, has said any bill must address climate change.
Congress will have to start from scratch on a bill to reauthorize the Pesticide Registration Improvement Act, which allows the collection of industry fees for the EPA office that approves pesticides and disinfectants. The legislation was derailed last year when Sen. Tom Udall (D-N.M.) sought to block the EPA from rolling back various Obama administration farm worker protection rules, and House Republicans balked, and the pesticide fees were left out of the farm bill.
Energy lobbyists are hoping the Senate Energy and Natural Resources Committee will at least pass pieces of a long-stalled comprehensive energy bill with bipartisan backing, including those addressing smart-grid technologies and upgrading the grid, as well as those encouraging electric and other advanced vehicles and energy storage.
The most recent reauthorization of the surface transportation act, in December 2015, authorized spending on federal highway and public transportation programs through September 2020. A new reauthorization could be an opening for Democrats to push climate-resilient infrastructure and low-carbon transportation options.
Senate Environment and Public Works Committee Chairman John Barrasso (R-Wyo.) also is readying bills to encourage advanced nuclear technologies and more incentives for carbon capture and storage—legislation that has Democratic support.
Familiar Senate Faces
While a new cast of Democrats will hold committee gavels in the House in the 116th Congress, the Republican-controlled Senate will return with familiar faces atop Senate environment and energy panels, where most climate, energy, and environment-related legislation emerges.

Republicans' 53-47 control of the chamber gives them some wiggle room to confirm the next EPA administrator—possibly Andrew Wheeler, tapped as acting EPA head in July after embattled Scott Pruitt resigned. Trump has not officially nominated Wheeler for Senate confirmation, but told reporters in November that he plans to.

Sen. Lisa Murkowski (R-Alaska) will head the Senate Energy and Natural Resources Committee, while Wyoming's Barrasso will head the environment panel. Murkowski said she wants to hold hearings on climate change.

While Delaware's Tom Carper will stay on Barrasso's committee as the top Democrat in 2019, the ranking Democrat on the energy committee will be Sen. Joe Manchin (D-W.Va.), a choice that has raised concerns for climate advocates who see the coal-state senator as a threat to reviving far-reaching climate legislation if Democrats can oust Trump in 2020.

Manchin told Bloomberg Environment that while he's a pragmatist on energy issues he is concerned about climate change and wants to "find that moderate middle place" in any legislative solution.
Climate Divide
House Democrats remain divided on climate-change legislation. Battle lines are being drawn in the House between old-guard Democrats and new arrivals.

"It's a priority of Democrats. We believe climate change is real, we believe it's an existential threat to the planet, and we believe we need to take definitive action," DeFazio told Bloomberg Environment.

Incoming Rep. Alexandria Ocasio-Cortez (D-N.Y.) and her allies are pushing a "Green New Deal" creating a select climate panel to draw up a plan over the next year putting the U.S. on the path to 100 percent renewable energy. Backed by dozens of House Democrats, It also calls for building a national smart grid and rapidly decarbonizing U.S. manufacturing, agriculture, and transportation sectors.

Ocasio-Cortez says she's well aware such legislation isn't politically viable in the near term. But she said Democrats should be working now to have a broad climate bill, one that can energize congressional support, and have it ready if Democrats can return to power in the White House and Senate.

Rep. Nancy Pelosi (D-Calif.), seeking to return as House speaker, has vowed to resurrect a select panel she launched in 2007, later scrapped by a Republican majority in 2011, though it lacked legislative authority.

'Take a Shot'
But Carper said nothing prevents Democrats from crafting compromises with Republicans to cut carbon emissions at the margins, while also laying the groundwork for comprehensive legislation.

"You know, people used to ask [hockey legend] Wayne Gretzky, 'Why do you take so many shots on goal?' And he says, 'Because I missed every shot I never took,'" Carper told Bloomberg Environment. "I think we take a shot and it makes sense to build support around a comprehensive approach."

"It also makes sense, if you have some low-lying fruit, such as removing emissions from mobile sources, to seize the day," Carper said. "You can do both."

The first bipartisan climate legislation in a decade—a carbon fee bill (H.R. 7173)—was introduced in November by Rep. Ted Deutch (D-Fla.) and Republicans Reps. Brian Fitzpatrick (Pa.), Francis Rooney (Fla.), and David Trott (R-Mich.), who is retiring.

But even it is reintroduced and passes the House, it faces extremely long odds in the Senate.

—With assistance from Pat Rizzuto, Tiffany Stecker, Rebecca Kern and David Schultz.

**Bloomberg Environment**
**EPA, Interior Mull Next Steps With No End in Sight for Shutdown**
https://news.bloombergenvironment.com/environment-and-energy/epa-interior-mull-next-steps-with-no-end-in-sight-for-shutdown
**By Dean Scott**
**12/27/2018**

The partial government shutdown could soon get serious for the Environmental Protection Agency.

The EPA stopped updating web sites and social media accounts and cut back slightly on staffing. But those relatively modest steps can go only so far in conserving cash nearly a week after Congress and President Donald Trump couldn't find a deal to extend funding for about one-quarter of the government past Dec. 21.

As the shutdown moves into the new year, furloughs of EPA workers loom as a greater possibility. That would mean the EPA would join the Interior Department, whose plans called for mass furloughs.

The Bureau of Land Management's latest contingency plan said 6,930 of the agency's 9,260 employees would be sent home in a shutdown, while the Fish and Wildlife Service said in its plan that about 7,000 of its 8,359 employees also would be barred from coming to work. And the U.S. Geological Survey said in a study that a shutdown would affect more than 99 percent of its 8,000-member workforce.

The EPA has technically remained open this week, but Dec. 27 is the second day that agency and many other federal employees returned to work after the Christmas Eve and Christmas Day holidays. EPA officials said acting Administrator Andrew Wheeler was expected to update employees Dec. 27 on the agency's next steps.

"EPA is to remain open through Dec. 28, with further instructions to come after," an agency spokesman told Bloomberg Environment. In the meantime, "it's business as usual here."

In a Dec. 20 email, Wheeler assured EPA employees that the agency had "sufficient carryover funds to operate for a limited period of time" and said he would have to evaluate which parts of the agency could remain open if the shutdown dragged on to the end of this week.

Hitting the Wall
The partial government shutdown is now in its sixth day with few signs of a compromise between Trump, who has insisted that any funding extension include $5 billion for a border wall, and congressional Democrats, who firmly oppose that spending.

Many lawmakers are bracing for the possibility the shutdown could drag on until at least Jan. 3, when Democrats take control of the House.

Some lawmakers have begun to call on the Federal Emergency Management Agency to be able to write and renew flood insurance policies during the partial shutdown.

Sen. Marco Rubio (R-Fla.) and Rep. Maxine Waters (D-Calif.) said in separate statements that the administration should reconsider its guidance preventing FEMA from issuing policies.

"I strongly disagree with this guidance, as it incorrectly interprets congressional intent demonstrated last week with Congress passing legislation to keep the program operating until June 2019," Rubio said in a Dec. 27 statement.

Service Shutdowns
The shutdown has already begun affecting EPA and Interior operations, including halting website updates and social media accounts, which makes it difficult for visitors to determine which national parks are open. Staff has been severely curtailed at National Parks and wildlife refuges.

While most BLM lands "remain accessible to visitors," continued public access "may change without notice," BLM warned. One drawback for visitors: There may be no bureau visitor services "including restrooms, trash collection, facilities or road maintenance."

Similar warnings have gone up on other Interior Department agencies including the U.S. Fish and Wildlife Service, which began closing public access to wildlife refuges Dec. 21. The service also stopped updating its @USFWSRefuges Twitter account.

Several BLM websites also are no longer being updated, including one that tracks developments for project environmental permitting.

The Interior Department's Office of the Secretary cautioned its bureaus against posting any updates during the shutdown "unless the post relates to an exception for operations," meaning responses to public safety threats or protection of property.

Employees also have been warned against posting information on their own time. "Working when not authorized, during a shutdown, would be a violation of the Antideficiency Act," Interior's contingency plan said. "Don't do that."

The chemicals industry is among those eager to see the shutdown end for the EPA. Attorneys specializing in chemicals policy have warned that a shutdown could have particularly severe effects on the EPA's oversight of chemicals in commerce and further delay the entry of new chemicals onto the market.

**E&E News**
**EPA employee: 'Luckily, our mortgage is paid for January'**
https://www.eenews.net/stories/1060110499
**By Kevin Bogardus**
**12/26/2018**

Using carryover funds, EPA remained open this week while other agencies have closed during a partial government shutdown. Kevin Bogardus/E&E News

What would normally be a sleepy holiday workweek at EPA headquarters seemed oddly significant today as the agency remained open while others were shuttered during a partial government shutdown.

Acting EPA Administrator Andrew Wheeler told staff in an internal email that they should report for work as usual this week, which was already shortened by federal holidays on Christmas Eve and Christmas. EPA will keep up operations using carryover funds for a limited period of time.

EPA employees told E&E News they expect many offices will be empty anyway since colleagues are on vacation. Still, they seem resigned that they too could be facing furloughs if Congress and President Trump don't agree on new funding soon.

"We have been through this before," one EPA employee said. "I feel discouraged that two years into this administration, this is the best our government can do for us."

This is the third government shutdown under President Trump. EPA also used carryover funds to keep up operations for the prior two lapses in appropriations under this administration.

At least one part of EPA remains closed. The Office of Inspector General posted a notice online that it would be shut down, except for its complaint hotline and some law enforcement functions.

"While the EPA has announced that most of its offices will be open for a limited amount of time, the OIG is independent of the agency and has a separate appropriation. We have determined that, absent an appropriation or continuing resolution, we must shut down," said the IG on its website.

An IG spokeswoman said last week that about 249 employees in the watchdog office could be furloughed (Greenwire, Dec. 21).

Others elsewhere in the federal government have also shut down. Overall, about 400,000 federal employees are estimated to be furloughed during this partial shutdown.

EPA employees said they expected to receive their paychecks this Friday. But if the shutdown extends longer than that, it could affect their future pay.

"Luckily, our mortgage is paid for January, and we'll get a check this Friday — after that, we panic," said one EPA employee. "I'm sure we'll get our back pay, but it's such a pain to have to call creditors and try and explain what is going on."

Others seem worried as well.

In an online survey of its federal employee members taken after the shutdown, the National Treasury Employees Union found that more than 78 percent were "very concerned" about how the funding lapse would affect their ability to pay their bills, rent or mortgage and other basic living expenses. Nearly 1,600 members responded to the survey, the union said.

Mike Mikulka, president of American Federation of Government Employees Local 704, said EPA employees are concerned about their pay next year.

"Most did not want to face another shutdown around the holidays, putting a damper on everyone's mood and creating uncertainty about when the shutdown would end and if we would lose pay in the new year," said Mikulka, whose union represents EPA Region 5 employees in the agency's Chicago office.

In his email, Wheeler said the agency would update staff on EPA operations this Friday. Several employees expect that is when EPA will run out of leftover funds and have to shut down.

That could mean more than 13,000 agency employees would have to stay home while roughly 700 would have to come to work under EPA's shutdown plan. Both sets of workers would be unpaid.

"Most people are prepared for a furlough situation at least early next week. I think folks are bracing for that. The sentiment is we will be furloughed starting Monday," said Jeanne Schulze, president of AFGE Local 1003, whose union represents Region 6 employees in EPA's Dallas office.

Funding for several federal agencies ran out last Friday. The Senate last week had passed a short-term spending measure to keep all of the government open, but the House moved that legislation along with $5 billion for a border wall, a key campaign promise for President Trump.

Trump has said the government will remain shut down until Congress approves border wall funding. Speaking to reporters in the Oval Office yesterday on Christmas, the president said the border wall has the support of federal employees (see related story).

"Many of those workers have said to me, communicated, 'Stay out until you get the funding for the wall.' These federal workers want the wall," Trump said.

That puzzled if not angered EPA employees.

"Huh? Who said that?" one said.

Another said colleagues at EPA thought Trump's sentiment was "disgraceful."

"How dare he say government workers want the shutdown and the wall," that employee said.

It seems likely the funding impasse won't be resolved this week. Office of Management and Budget Director Mick Mulvaney, who is also Trump's incoming White House chief of staff, said he envisions the shutdown will last into January.

"It's very possible that the shutdown will be on the 28th and into the new Congress," Mulvaney said on Fox News Sunday.

One EPA employee said it was a strange time for a shutdown, considering so many federal workers are off for the holidays. That could hinder an orderly closure of the agency once it runs out of carryover funds.

"If we stay shutdown next week, it will be tricky because so many people are off that running the shutdown scenario will not be so straightforward," an EPA employee said.

Schulze said the furloughs would come at a tough time.

"It can cause a lot of stress for federal workers," she said. "It couldn't come at a worse time, right after Christmas. Bills could be coming due if we are furloughed."

**Greenwire**
**Hill in limbo as spending deal remains elusive**
https://www.eenews.net/greenwire/stories/1060110577/
**By Geof Koss, E&E News reporter**
**12/27/2018**

Capitol Hill remains in a holding pattern as the partial government shutdown enters its sixth day with no end in sight to the impasse over funding President Trump's border wall.

The House and Senate are both expected to gavel in this afternoon. But the session will be largely symbolic as lawmakers are likely to stay away from Washington, D.C., until they receive 24 hours of notice of an agreement. The shutdown is affecting 25 percent of the federal government.

Asked about his expectations for resolution to the standoff when the Senate convenes at 4 p.m., Sen. Ben Cardin (D-Md.) noted last night that Senate Majority Leader Mitch McConnell (R-Ky.) has said the chamber will not vote on any potential solution until it's signed off by House and Senate leaders from both parties, as well as Trump.

"I think that's not likely to happen until Jan. 3, when the new Congress is in session," Cardin said on CNN's "Erin Burnett OutFront." "It's possible but unlikely."

A spokeswoman for House Majority Leader Kevin McCarthy (R-Calif.) tweeted yesterday that no votes are expected in the House today "as we await action from the Senate on remaining appropriations."

The shutdown started Friday night, when spending lapsed for agencies covered under the seven annual spending bills that have not been signed into law, including the Interior Department and EPA. Although six of those bills are finished, they've been stalled while the White House and Congress continue negotiations on Homeland Security, which contains the border security funds.

After a whirlwind trip to visit U.S. troops in Iraq and Germany, Trump is back in the White House today, where he took a shot at Democrats this morning over the standoff.

"Have the Democrats finally realized that we desperately need Border Security and a Wall on the Southern Border," he tweeted. "Need to stop Drugs, Human Trafficking, Gang Members & Criminals from coming into our Country. Do the Dems realize that most of the people not getting paid are Democrats?"

Trump's apparent assertion that most furloughed federal employees are Democrats runs counter to his statement earlier this week that "many of those workers" have communicated to him that they support the shutdown because they want the border wall with Mexico (Greenwire, Dec. 26).

Asked how long the shutdown would last yesterday in Iraq, Trump showed no signs of backing down.

"Whatever it takes," he said. "I mean, we're going to have a wall. We're going to have safety."

Trump also suggested that the onus is on Democrats to end the shutdown.

"So when you say, 'How long is it going to take?' when are they going to say that we need border security? When are the Democrats going to say it?" he asked.

Trump also repeatedly sidestepped questions over whether he has lowered his demand for $5 billion for the border wall to $2 billion, as has been suggested in recent days. The Senate Homeland Security bill would have given the administration $1.6 billion for border security, an amount that Trump says isn't enough.

In Iraq, Trump suggested that Democrats won't make a deal to reopen the shuttered agencies until after House Minority Leader Nancy Pelosi (D-Calif.) officially becomes speaker in January.

"And probably, if they do something, she's not going to get the votes, and she's not going to be speaker of the House," he said. "And that would be not so good for her."

Trump also said that Senate Minority Leader Chuck Schumer (D-N.Y.) "wants to have this done. ... But the one who is calling the shots is Nancy Pelosi."

Schumer and Pelosi earlier this week questioned whether the president even wants to end the stalemate, noting that his weekend meeting with lawmakers included hard-line conservatives from the House Freedom Caucus who support his bid to win wall funding.

"The president wanted the shutdown, but he seems not to know how to get himself out of it," Schumer and Pelosi said in a joint statement Monday.

**Montana Standard**
**EPA not affected by shutdown for now, but future uncertain**
https://mtstandard.com/news/local/epa-not-affected-by-shutdown-for-now-but-future-uncertain/article_459d6cca-1e0e-5b21-89e9-b73af8d2f478.html
**By Susan Dunlap**
**12/27/2018**

The current federal government shutdown won't affect Butte or Anaconda's Superfund sites, at least for now, according to an email from EPA Region 8.

President Donald Trump refused to sign an appropriations bill on Friday that Congress passed last week. Trump said he wouldn't sign the bill unless $5 billion in funding for his long-promised border wall was attached.

Not signing the funding bill effectively shut down the federal government last week. Despite the estimated $4 billion price tag U.S. taxpayers will have to pick up, Trump continued to stand firm Wednesday on his demand that Congress must first pass funding authorization for a wall before the rest of the government could get money to keep working.

Trump said Wednesday that the shutdown could continue for an extended period.

Chris Wardell, EPA Region 8 community involvement coordinator, said by email that EPA "has sufficient carryover funds" to keep going through Christmas week. So at least until Friday, it appears that the more than 13,000 EPA workers still have a job and a paycheck.

Beyond that, EPA expects to keep operations going for a few weeks at Superfund sites such as Butte's and Anaconda's, where there is an enduring need for water treatment or where the cleanups protect human health. Beyond that, it's anybody's guess what may happen.

EPA recently hired a new community involvement coordinator who is expected to be based in the Montana field office. Ever since Robert Moler, former EPA community involvement coordinator, left the agency about nine months ago, many in both Butte and Anaconda have criticized the fact that the Montana office does not have its own community involvement coordinator.

Wardell is based in Denver and is responsible for sites all over Region 8's six Western states and 27 tribal nations.

While the EPA has not released the new community involvement coordinator's name, he or she is expected to begin work Jan. 22. The agency did not comment on how the shutdown might affect that hire.

Other agencies, such as the Department of Interior and the U.S. Forest Service, are trying to maintain some services to Montanans during the federal government's closure.

Forest Service law employees and other emergency workers will be exempted during the furlough. Federal employees who do ongoing research and Job Corps activities under the Department of Agriculture are also considered "essential" and therefore exempt from furlough.

The Department of Interior's National Park Service will operate law enforcement and emergency response workers but will not issue permits, lead tours or provide other services. The Bureau of Land Management, another agency within the Dept. of Interior, will not pick up trash collection, maintain roads on BLM land, clean restrooms located on BLM land or provide other visitor services.

The 4,000 recreation facilities on BLM land will remain closed during the shutdown. As with other agencies within the Interior, BLM employees who provide emergency help will still report to work.

The BLM will provide "very minimal" inspections for the 5,730 oil and gas leases currently issued on BLM land. The BLM manages 245 million acres across the West. New permits for oil and gas or other minerals have also come to an end during the shutdown.

Butte's Federal court system will continue unabated, said Colin Hansen, a Butte federal court clerk.

**Greenwire**
**Trump's rule a wild card for Western water supplies**
https://www.eenews.net/greenwire/stories/1060110469/search?keyword=epa
**By Ariel Wittenberg and Jeremy P. Jacobs, E&E News reporters**
**12/26/2018**

The Trump administration's proposal to limit the Clean Water Act's reach over wetlands and waterways would likely complicate efforts to protect and manage the parched West's most important and imperiled source of water.

At risk: the Colorado River — water provider for 40 million people and vast swaths of cropland — which is already reeling from a crippling drought and rising water demands.

Trump's proposed waters of the U.S. (WOTUS) rule would strip federal protections for ephemeral streams that only flow after rain or snow and wetlands without continuous surface water connections to waterways. That's particularly important in the Colorado River Basin.

Ephemeral streams make up about 18 percent of waterways nationwide, but they are more common in seven Colorado River Basin states, where a boom-or-bust pattern of very wet years followed by drought prevails. In Nevada, 85 percent of streams are ephemeral; in New Mexico, 66 percent; and in Arizona, 51 percent, according to the U.S. Geological Survey. The other states in the river basin are Wyoming, Colorado, Utah and California.

By allowing more development in wetlands and streams across the basin, experts say, the Trump rule could decrease both the quantity and quality of water entering the river.

"Those small streams are a significant part of the hydrologic system, and if they are no longer protected by the Clean Water Act, the impacts could be quite horrendous in terms of quantity and quality," said Gene Reetz, who retired 10 years ago as a wetlands coordinator in EPA's Colorado-based Region 8, where his mission was trying to control salinity in the Colorado River.

The Trump proposal comes as states try to finalize a contingency plan for drought in the Colorado River Basin.

The river's headwaters in Rocky Mountain National Park will remain protected regardless of whether the WOTUS rule is finalized, but most of the river's tributaries would lose protection under the proposal because Colorado River states have widely varying protections.

Most states have taken over at least some regulation of point sources of water pollution that enter waterways from discharge pipes, regulatory schemes that would make it easier to expand state protections. But New Mexico relies completely on the federal government to regulate such pollution.

Only California and Nevada have their own programs regulating dredging and filling of wetlands and streams, which can damage downstream water quality and quantity.

Wetlands serve as pollution sponges, soaking up contaminants before they enter waterways. They also buffer flooding in heavy storms and provide habitat for wildlife.

California is the only state in the basin that protects more waterways and wetlands than the federal government. Five of the seven states have laws that would make creating programs to restrict dredging, filling and other destructive activities exceptionally difficult, including those that require state regulations to be in line with federal ones.

Melinda Kassen, an attorney for the nonprofit Theodore Roosevelt Conservation Partnership, said those obstacles mean it's unlikely that Colorado River states will step up to fill in gaps left from the Trump administration's WOTUS proposal.

"The notion that states will do the protecting — there is not a lot of evidence to support it," she said. Even if states had the political will to write completely new rules, funding would still be an issue.

Kassen said there is little to suggest "the states have the bandwidth to do it."

Any pollution in ephemeral streams — be it from point sources or from dredging and filling — damages water quality downstream, Reetz said.

"The hydrological system is somewhat like our own circulatory system in the body," he said. "Tiny capillaries are connected to larger veins and organs, and if you do something to the capillaries — or to the ephemeral streams — ultimately, that will impact the health of the arteries."

'Regulatory nightmare'

The Bureau of Reclamation has ordered a Jan. 31 deadline for the states to reach agreement on water cutbacks in the river basin when a shortage on the river is declared. A shortage could be declared as soon as next year and trigger reductions as soon as 2020.

"If you add water quality into that equation, we could go from two-dimensional chess to three-dimensional chess," said James Eklund of the law firm Squire Patton Boggs, who serves as Colorado's principal on river issues.

"Basinwide, water quality does matter, and it can matter substantially," he said.

There are multiple programs in the basin that extend beyond state lines and are underpinned by federal water protections. One is a salinity control program, and another is a recovery regime for endangered fish.

"If the states are left to fill the void on water quality," Eklund said, "we could face a patchwork of complexity that these programs have helped us avoid in other areas."

Salinity has long been a problem in the Colorado River, Reetz said, and allowing development of ephemeral streams could create an imbalance by destroying flows of fresh, clean water.

Federal regulation of ephemeral streams doesn't always help Colorado River management.

Jeff Kightlinger, general manager of the Metropolitan Water District of Southern California, said ephemeral stream management has been a constant problem along the Colorado River aqueduct, which delivers water to Southern California.

At times, there have been up to 100 ephemeral streams crossing the 242-mile aqueduct, many of which only flow two days per year, he said. That has led to constant construction and reconstruction of berms to prevent the streams from reaching the aqueduct.

"It became a difficult regulatory nightmare," said Kightlinger, whose agency is the country's largest water retailer, serving nearly 19 million people.

Other advocates say leaving those ephemeral streams largely unprotected could have dire consequences.

The mining of streams for minerals is not uncommon in ephemeral headwaters of the Colorado River, particularly in Colorado, Reetz said.

"If those are no longer waters of the U.S., you wouldn't have treatment requirements for heavy metals going into those tributaries," he said.

Climate change
Extended drought is already causing headaches for Colorado River managers.

With droughts expected to be more extreme and last longer due to climate change, more streams could be at risk of losing federal protection under the Trump rule as time goes on.

The WOTUS proposal would maintain Clean Water Act protections for intermittent streams that only flow as snowpack melts or as the groundwater table rises to intersect with a streambed.

The regulation would look at a rolling 30-year average of precipitation for an area to determine whether a stream flows independent of rainfall.

But if drought in the West continues, groundwater tables could rise less often — and snow might not fall often enough to meet the administration's definition of snowpack.

That means streams currently considered intermittent could eventually be fed solely by rain or snow fall — excluding them from Clean Water Act protection under the Trump rule.

That's a predicament that makes Reetz "definitely concerned," he said.

Those ephemeral streams only become more critical for Colorado River water quality and quantity as the drought continues, he said. That, in turn, is critical to making sure states can stick to whatever agreement they come to this winter.

"They are already wrestling with this issue right now, and I really wonder, if push comes to shove, if the agreement will hold when it's really crunch time," he said.

"This WOTUS proposal only complicates things."