Message

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Daily Clips – Feb. 11

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Bloomberg Environment
Trump EPA's Adviser Policy in Legal Knot After Court Ruling (1)
https://news.bloombergenvironment.com/environment-and-energy/trump-epas-adviser-policy-in-legal-knot-after-courtroom-defeat
Ellen M. Gilmer
A court decision striking down the Trump administration's effort to limit who can serve on EPA advisory boards conflicts with other rulings and leaves open questions about the policy's future.

The U.S. District Court for the Southern District of New York ruled Monday that the Environmental Protection Agency was arbitrary and capricious when it adopted a 2017 directive barring EPA grant recipients from serving on the agency's influential teams of outside experts.

But the ruling doesn't explicitly scrap the policy, leaving its immediate impact unclear. Judge Denise L. Cote called on both sides to confer and propose a plan by Feb. 21 for how to terminate the case or resolve remaining issues.

"The status of the directive is something that we anticipate the court will determine, after reviewing what the parties submit," lawyers for the Natural Resources Defense Council, which brought the case, said in a statement.

The EPA relies on committees of outside experts for technical and scientific advice on air quality, chemicals, environmental justice, and other areas.

Then-Administrator Scott Pruitt tightened the membership criteria during the first year of the Trump administration, with the stated goal of eliminating pro-agency bias on the boards. Critics accused the agency of eliminating the most qualified experts in order to make room for industry-friendly advisers.

Chris Frey, former chairman of the Clean Air Scientific Advisory Committee, praised Monday's court ruling.

"The impact of this decision is to partially restore sanity to policies for appointing scientific experts to scientific advisory committees," he said, adding that the EPA should scrap other membership restrictions.

The NRDC likewise called the decision "a victory for basic truth and good governance."

Layers of Litigation

The Environmental Protection Agency said it's reviewing the ruling, and hasn't yet signaled whether it plans to challenge it. An appeal, if filed, would land in the U.S. Court of Appeals for the Second Circuit.

The new ruling adds another layer to the complicated litigation landscape over the policy, following three other district court rulings that rejected challenges to the policy.

The U.S. Court of Appeals for the District of Columbia Circuit hears oral arguments Feb. 19 in an appeal of one of the failed challenges. The U.S. Court of Appeals for the First Circuit heard a parallel case in December and hasn't yet issued a ruling.

Protect Democracy Project attorney Ben Berwick, who is helping to represent the Union of Concerned Scientists and a former member of the Clean Air Scientific Advisory Committee in the First Circuit case, noted that Monday's ruling doesn't necessarily affect his case because the New York district court's ruling isn't binding on the First Circuit.

Still, he said, appellate judges might find it persuasive. The same is true for the case pending from Physicians for Social Responsibility and other challengers in the D.C. Circuit.

Split decisions from the circuit courts could attract the attention of the Supreme Court if either side seeks review.

The New York case is Nat. Res. Def. Council v. EPA, S.D.N.Y., No. 1:19-cv-05174, 2/10/20.

—With assistance from Amena H. Saiyid.

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E&E News
EPA's New IG: 'I will always be friendly'
https://www.eenews.net/greenwire/2020/ /stories/1062289421
Kevin Bogardus,

Sean O'Donnell is settling in as EPA's new inspector general on the heels of high-profile clashes between the watchdog office and agency leadership.

Outgoing EPA Chief of Staff Ryan Jackson last year refused to cooperate with various investigations by the IG, triggering a warning that grabbed Congress' attention. Tempers cooled somewhat after Jackson later agreed to sit for an interview for one of those investigations.

Critics of the Trump administration also turned to the IG office during the tenure of Scott Pruitt, who resigned as EPA administrator in July 2018 under an ethics cloud. Many felt the inspector general should have been more aggressive with Pruitt, including after his departure.

Sworn in more than two weeks ago, O'Donnell, 46, is now in charge of the office — with a nearly $53.1 million annual budget and 268 employees — that's responsible for rooting out fraud, waste and abuse at EPA.

A former trial attorney at the Department of Justice, O'Donnell had a smooth confirmation. Nominated by President Trump last October, he was confirmed by the Senate on a voice vote in December. The office had lacked a confirmed leader for more than a year.

The University of Texas law school graduate served in several offices at DOJ, and as a federal prosecutor handled complex cases involving corruption and fraud.

O'Donnell sat for an interview with E&E News last week in his EPA headquarters office.

You grew up in Washington state. Many in your family were stevedores at the Port of Seattle. What was that like?

I think it was relatively typical of growing up in Washington state in the '70s and '80s. It was a blue-collar town at the time, so most of my friends had parents who worked on the waterfront or worked at Boeing.

You served at DOJ from 2005 until you were confirmed as EPA inspector general. Why get into law for the federal government?

I decided I wanted to be a lawyer while I was a graduate student at the University of Texas, and I had a chance to work with a professor who was doing litigation consulting for a major lawsuit. I saw the challenge he had of communicating difficult mathematical, statistical and scientific notions to lawyers who then had the challenge of communicating it to a jury or a judge. It was a form of storytelling that happens to be a lot of fun.

I think it was just a natural sense of public service. There are few things I think are as rewarding for any attorney than being able to stand up in court and say, "Sean O'Donnell for the United States" or "Sean O'Donnell for the president."

What was your strangest case at DOJ?

We sued the city of Philadelphia for failing to protect the voting rights of Spanish-speaking, Puerto Rican and Vietnamese voters. It was my very first trial. I was so nervous. I cross-examined the city's witnesses and gave the closing argument. I'll tell you, leading up to that and afterwards, the city of Philadelphia, the way they run elections was so profoundly strange that one day, I would probably write a book, and it would be several volumes, like the Johnson [biographies], each one about a different area.

You served on a detail at DOJ to help vet President Trump's judicial nominations, including Supreme Court Justice Neil Gorsuch. What did you do as part of that confirmation process?

I mostly did a support role, writing memos on the state of the law. Of course, you want to brief then-Judge Gorsuch on different aspects of the law, different legal developments. He obviously was and is an extremely intelligent jurist, but even the best jurist probably doesn't know about the developments in, say, Section 5 of the Voting Rights Act or on the exercise of executive authority in national security areas.

How did you get the job of EPA inspector general?

People that I knew from the Department of Justice who had gone over to the White House counsel's office knew me. I had a good reputation. I had done a lot of work with IG offices in the past.

Where do you think the inspector general is most needed at EPA?

I think that IGs across the board, what they can do is really help to inspire a sense of integrity in the departments they serve. I think it's so important that the public have confidence in good government. When there's an IG that's aggressive, professional, thorough, helping the agency exposing waste, fraud and abuse, I think that the public then actually feels better.

The EPA Office of Inspector General has been criticized for how it handled some of its investigations into former EPA Administrator Scott Pruitt — closing some of those cases as "inconclusive." Do you plan to reopen those investigations?

I don't have any plans to second-guess the judgment of the staff that was made before I got here. I can tell you, having met with a great many of the staff members, I've been absolutely impressed with their commitment to the mission and the commitment to the EPA mission. I have no reason to second-guess that.

I understand the frustration that comes from that because I think so often for every IG office, they feel like they have done a lot of work; they put together a really good report, and they take it to the Department of Justice, which doesn't always appreciate the hard work they put into this.

EPA Chief of Staff Ryan Jackson didn't tell the IG office who gave him an advance copy of congressional testimony as part of an audit and initially refused to sit for an interview with IG agents for another investigation, which sparked a rare "Seven Day Letter." Have you reviewed this matter yet?

I have reviewed all of the written correspondence. I have begun talking to the office here. There's a great deal of context involved in what happened. I'm pleased that a lot of it has been resolved. I can tell you that the administrator on my first day committed to cooperating with the IG office fully. I think that ultimately, when you look at where our difference was, it was maybe more narrow then we really needed to make it seem so that ultimately, we were able to interview Mr. Jackson.

Was sending the Seven Day Letter the right move by the IG office?

Like I said, I'm not going to second-guess the decisions that were made under previous leadership. I have faith in them. I'm getting to know all of them. They're all absolutely committed to the mission of the office.

As part of its response to the Seven Day Letter, EPA produced legal advice saying the IG office couldn't compel EPA employees to sit for interviews and inquiring about congressional testimony was not part of its jurisdiction. What are your thoughts on that advice?

I think it's more complicated than that. I think that the [Inspector General] Act absolutely gives the inspector general's office access to all documents, all reports and all materials. I think it also allows us to get access to information. Sometimes, that information is locked in an individual's head, which is why we will of course go through the administrator if we need to for help. In that regard, I think the administrator has made clear that he encourages cooperation with the IG's office. What I'm hoping is going forward, that will actually be the case.

Regarding that legal advice, the IG office said there was "recklessness in such views" and it would turn the Inspector General Act into "a no man's land," creating "wholesale exemptions" from providing information. Do you agree?

Again, I was not the author of the letter, and I'm not going to second-guess [then-acting EPA IG Charles Sheehan] in his writing. What I can say is that it's absolutely essential that the agency respond to all of our requests for documents, for written reports, materials that's provided for under the IG Act, and that it also facilitate our requests for information as is provided under the IG Act.

How are relations now between EPA and the IG office?

I've had the opportunity to meet with Administrator Wheeler and a couple of the assistant administrators. I plan to continue meeting with assistant administrators. Also, I'll be going out to the regions and meeting with regional leadership.

I'll tell you, every one of my meetings have been absolutely positive. Every office has pledged its commitment and its support of our work.

As inspector general, what kind of relationship do you think you should have with EPA?

I'll go back to what I had told the office on my first day, which is that I will have a professional relationship with every single person here in the agency. I might not be their friends, but I will always be friendly.

How long do you plan to serve as EPA inspector general?

I certainly don't have any plans to head on out.

Is this something you see stretching for several administrations?

That's my intention.

Your LinkedIn profile once had a drawing of English writer G.K. Chesterton as your picture. Why?

I have obviously read Chesterton. I enjoy Chesterton. He was sort of the Victorian Dr. Johnson with his turn of phrase and fabulous writing, and so that, of course, would be the intellectual reason I put it on there. Actually, I just thought what a great head of hair. And what a great beard and mustache.

This interview has been edited and condensed for clarity

Los Angeles Times
Former PG&E lawyer named new regional EPA chief in California
https://www.latimes.com/politics/story/2020-02-11/pg-e-executive-named-new-regional-epa-chief-in-california
Anna M. Phillips

WASHINGTON — Days after the Environmental Protection Agency's top official in California was abruptly removed from office, the agency announced Tuesday that it would replace him with John W. Busterud, a former lawyer for the Pacific Gas & Electric Co., the state's largest electric power provider.
EPA Administrator Andrew Wheeler praised Busterud's "extensive background in energy and environmental issues" in a press release and said he was a "great choice" to lead the agency's Pacific Southwest regional office, which oversees California, Nevada, Arizona, Hawaii and other far West territories.

Busterud's appointment continues a trend within the Trump administration of staffing government environment jobs with people who have ties to the power sector, fossil fuels or agriculture — as well as other industries subject to environmental regulations.

According to his EPA biography, Busterud has spent more than 30 years as an attorney specializing in environmental and energy issues, most recently as PG&E's senior director and managing counsel for environment and real estate. He served for five years on EPA's Clean Air Act Advisory Committee as an industry representative.

"It is an honor and privilege to serve as Regional Administrator of EPA Region 9," said Busterud in a press release issued Tuesday morning. "I look forward to working with Administrator Wheeler, the administration, our dedicated professional staff, and our partners and stakeholders to protect human health and the environment in the Pacific Southwest."

The appointment comes less than a week after the agency suddenly dismissed the regional office's former administrator Mike Stoker, sparking a public flare-up between the two.

In a letter to his staff, Stoker speculated he was fired because of his congenial working relationship with Democratic lawmakers, including House Speaker Nancy Pelosi, and because he had clashed with agency officials in Washington "over policy and non-policy items."

Stoker told The Times that he had recently been warned by a senior EPA official that "it wasn't going unnoticed how many Democrat members in Congress were commending me for the job I was doing."
However, EPA spokeswoman Corry Schiermeyer disputed Stoker's account, calling his description of events "all made up."

"Mike was too interested in travel for the sake of travel and ignored necessary decision making required of a regional administrator," she said in the statement.

The agency's move and the accusations that followed left some California lawmakers and EPA regional staffers puzzled by the conflicting accounts.

Stoker's appointment was controversial and there had been complaints to the agency about his heavy travel and infrequent visits to the region's main office in San Francisco. Those concerns prompted a review by the agency's Office of the Inspector General.

But when the watchdog released its report last year showing that Stoker spent only 20% of his time in San Francisco, the EPA defended his trips.

Bloomberg Environment
Justice Seeks More Money to Defend Trump Environmental Policies
https://news.bloombergenvironment.com/environment-and-energy/justice-seeks-more-money-to-defend-trump-environmental-policies
Ellen M. Gilmer

The Justice Department is asking Congress for an infusion of cash to help defend the Trump administration's environmental agenda.
The fiscal 2021 budget request seeks $796,000 for the department's Environment and Natural Resources Division to support its defense of the Trump administration's pollution control and "regulatory reform" agenda.
"Virtually every significant agency action implementing this agenda has been or will be challenged," the division said in its Monday request.
"This increased workload," it added, "is no longer sustainable and additional resources are necessary for ENRD to continue to be able to allow the best possible defense of the Administration's priority actions."
ENRD defends the Environmental Protection Agency, the Interior Department, and other agencies in court, and pursues litigation against polluters and others who allegedly violate environmental laws.
The division wants to add five attorneys, two paralegals, and other potential staff to support an initiative—dubbed the "Smart, Responsible, Common-Sense, Effective Approach to Environmental Litigation"—focused on defending the Trump administration's policies.
Justice Department lawyers in the division are already busy defending some of President Donald Trump's priorities, including the rollback of Obama-era climate and public land protections. More high-stakes litigation is expected this year after agencies finalize new vehicle emissions standards, water protections, and other policies.
The division also handles land acquisition for the U.S.-Mexico border wall.
Overall, ENRD is seeking to increase the $109.4 million enacted for fiscal 2020 by about $4 million to cover increases in pay, benefits, and other "base adjustments" on top of the nearly $800,000 increase for defending the administration's policies.
The Justice Department didn't immediately respond to a request for more information about the budget request.

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Bloomberg Environment
Trump Proposes Slashing EPA, Army Corps of Engineers Budgets (5)
https://news.bloombergenvironment.com/environment-and-energy/trump-proposes-slashing-epa-army-corps-of-engineers-budgets

Amena H. Saiyid

The Trump administration wants to slash the budget for the EPA and the Army Corps of Engineers, even though Congress has been overruling the White House's proposals for those agencies.

The administration requested $6.7 billion to fund the Environmental Protection Agency in fiscal 2021, according to the budget request. That amount is $2.4 billion, or 26.5% below the near-record level of $9.1 billion that Congress approved for the EPA in December.

For the Corps, the administration is seeking $6 billion for the upcoming fiscal year, which is $1.7 billion or 22% below the enacted levels for the current year.

The proposal was slightly higher than last year's request of $6.1 billion, but consistent with the Trump administration's prior budget requests for the EPA.

The administration also asked for more money for the Corps than it did last year, when its request was $4.8 billion.

Trump has sought deep cuts in the EPA's budget since he took office, but Congress has increased the agency's funding each year.

Treating 'Forever' Chemicals

For the first time, the president's budget request proposes $6 million for the EPA to carry out its PFAS action plan, which outlines ways the agency would research and consider regulating the ubiquitous chemicals.

The funding would go toward research and communicating the chemicals' risks to the public, according to the proposal.

PFAS, also known as per- and polyfluoroalkyl substances, have been detected in water supplies across the country. The EPA proposes adding the equivalent of five full-time employees to help implement the action plan.

For the current fiscal year, Congress provided $13 million to the EPA to treat, cleanup, and remediate PFAS and other emerging contaminants.

To finance the national lead program, the EPA is requesting $61 million to support lead testing in schools, replacement of lead pipes, certification of lead paint professionals, and development of improved lead sampling and treatment methods.

The administration again proposed reducing the Superfund program's budget, but with a less severe cut than in past years. The proposal would knock $113 million off the program's budget, keeping the Superfund program hovering around $1 billion.

The administration justified the cut by saying the EPA's Superfund task force has made the program more efficient, and the agency is now more likely to use funds from settlements with potentially responsible parties at sites, instead of federal money.

In Monday's budget request, the administration is once again seeking congressional support to allow EPA to collect user fees for programs like it's Energy Star, which helps consumers save energy through efficient appliances. The agency also would like Congress to establish compliance assistance fees for responses to chemical and oil spills. It also would like to expand its pesticide licensing fees by $29 million over a ten-year period.

"Administering select EPA programs using funds collected from user fees would reduce the burden on taxpayer resources," the White House said in its budget document.

Research, Regional Program Cuts

The budget request seeks $281 million for research, a $219 million or nearly 50% drop from the $500 million the agency received this year. The budget would eliminate the EPA's Science to Achieve Results grants, through which universities and other research institutes received money for air, water, and other environmental and health research.

The agency said research and development activities "in the form of research grants to non-Federal entities such as universities are not required to meet EPA's statutory obligations and therefore would not be funded."

At the same time, the administration has again targeted various EPA programs aimed at restoring ecosystems in the Chesapeake Bay, Great Lakes, Puget Sound, Lake Champlain, and Gulf of Mexico for cuts. Each of those programs is popular with lawmakers in both parties.

The agency is requesting $331 million, compared with the $501 million that Congress restored after the agency's attempt to slash these programs. The agency said it would fully fund the Great Lakes and South Florida initiatives, but would provide limited funding for the Chesapeake Bay initiative.

"Chopping another 26 percent from an already lean Environmental Protection Agency would imperil efforts to clean up environmental hazards, let polluters run amok, and slash funding to clean up the Chesapeake Bay," Sen. Chris Van Hollen (D-Md.) said in a statement.

Florida Everglades Boosted

The administration is also seeking to allocate $250 million to restore the Everglades from the Corps' total aquatic restoration program budget of $350 million.

That's less than the $200 million the Corps wants for implementing its regulatory program, $10 million less than what Congress appropriated for the current year. That program primarily consists of issuing Clean Water Act permits for

dredging and filling wetlands and streams, and building roads, bridges, and pipelines. These permits would be issued under the Trump administration's new, narrower interpretation of Clean Water Act protections for the nation's bodies of water.
"It will be easier and faster for the regulated community to get things done. It's a clear choice whether it's Waters of the U.S., or not," Assistant Secretary of the Army for Civil Works, Ricky "R.D." James, told reporters.
Environmental groups objected to the EPA's budget request.
"The Trump administration's new budget extends efforts to destroy EPA's ability to do the very job Congress intended the agency to do: protect people from pollution," according to Martin Hayden, vice president of policy and legislation at Earthjustice, a nonprofit environmental law group that has challenged the Trump EPA's efforts to roll back regulations.
Former EPA Administrator Gina McCarthy, who heads the nonprofit Natural Resources Defense Council, urged Congress to "toss this Trump budget into the dustbin of history like they've done with other ones."
"At a time when we're only seeing greater risks from climate change, these agencies deserve to be fully funded by Congress," McCarthy said.
But the conservative Heritage Foundation think tank lauded the budget proposal.
"Reducing the EPA's budget and regulatory reach isn't a question of choosing between clean versus polluted air and water," Heritage economist Nick Loris said. "A number of programs within the EPA's purview are either wasteful, duplicative, or not the role of the federal government. It's an opportunity to right-size the agency's budget, put management back into the right hands, and restore the proper relationship between federal and state agencies."

Drinking Water Cuts

The White House also is proposing deep cuts in clean water and safe drinking water revolving funds popular with states and local communities for upgrading water infrastructure.
The Trump administration also is requesting a total of $1.98 billion in fiscal 2021 for the Clean Water and Drinking Water State Revolving Funds, a more than 28% decrease from the $2.77 billion Congress appropriated in the fiscal 2020 spending deal that Trump signed Dec. 20 (P. Law 116-94).
The EPA Clean Water State Revolving Fund program is a federal-state partnership providing communities low-cost financing for various water quality infrastructure projects.
A separate water funding effort, the EPA's Drinking Water State Revolving Fund, helps states provide safe drinking water.
The Trump administration has repeatedly proposed cutting funding for the State Revolving Funds and some other water infrastructure programs, including ones targeted toward low-income and minority communities. Congress has rejected those proposed cuts and actually increased funding for such water projects.
—With assistance from Dean Scott, Pat Rizzuto, Stephen Lee, and Sylvia Carignan.
(Updated with budget details and comments from Corps officials in paragraphs 20-22.)

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E&E News

Energy and Environmental Numbers That Will Matter This Year

https://www.eenews.net/eedaily/stories/1062319201

George Cahlink

President Trump recently said, according to recordings obtained by *The Washington Post*, "Who the hell cares about the budget?"
House Budget Chairman John Yarmuth (D-Ky.) announced yesterday that Democrats won't bother to pass a spending blueprint this year, saying they can rely on goals set in last summer's fiscal accord.
Senate Budget Chairman Mike Enzi (R-Wyo.) called the White House's latest budget request "just a list of suggestions."
As the Trump administration rolled out its $4.8 billion fiscal 2021 budget plan yesterday, there was plenty of talk that it would go nowhere and serve as no more than a messaging document in an election year.
But Congress will still need to pass the 12 annual appropriations bills, and even if the president's plan won't be adopted, it sets the stage for several spending fights.
Here are the energy and environmental budget numbers worth watching as those disputes and decisions play out:

12,610

That's how many employees would be left at EPA if the White House makes good on its plan to whack the workforce by 10%, or about 1,600 workers, next year.

The president has marked EPA for double-digit reductions in each of his four budget requests. The latest proposal would eliminate the first increase EPA got in years in December — reducing its top-line number by nearly $2.5 billion to $6.7 billion for fiscal 2021.
The White House framed the plan as part of a broader effort to cut regulatory spending. In his request, Trump took credit for cutting seven regulations for every new one. EPA rules have been a top target.
But lawmakers from both parties say there's broad support from voters for the agency's work on clean air, clean water and environmental cleanup — even if there are sharp differences over climate work.

97%

The Land and Water Conservation Fund has proved as politically popular with lawmakers as the trails, parks and other conservation areas the program helps pay for.
The Trump budget calls for gutting the program's record fiscal 2020 funding by a whopping 97% to $14.8 million in fiscal 2021. The White House knows Congress will never go along, and LWCF may even be eventually funded at higher levels.
But the administration is eager to present its budget as cutting billions of dollars, and LWCF, which pays for state and local conservation programs, is an easy target with no real downside for Trump.
In fact, several Republican senators facing competitive reelections this fall could benefit by arguing against the LWCF cuts.
Expect GOP Sens. Steve Daines of Montana, Susan Collins of Maine, Cory Gardner of Colorado and Thom Tillis of North Carolina to rush to denounce them and then claim credit for reversing them.

$1.4 billion

The White House once again wants to ax Department of Energy renewable and clean energy research programs that it calls wasteful and duplicative. Those cuts would total around $1.4 billion for fiscal 2021.
The Office of Energy Efficiency & Renewable Energy, funded at $2.85 billion in fiscal 2020, would see a reduction of about 75% to $720 million in the fiscal 2021 request.
The Advanced Research Projects Agency-Energy would get enough money, $22 million, to close shop. The cut marks the fourth time in the row that the White House has tried to shutter the technology incubator program.
Congress has consistently responded with more funding for both. The programs are especially popular with Republicans who see the alternative energy research dollars as a more measured response to climate change than new regulations or bans on fossil fuels.

1%

Federal employee pay rarely escapes a budget cycle without being targeted, and this year is no different. The administration wants to freeze pay raises for federal workers at 1% in fiscal 2021, only a year after they got their largest increase in a decade, 3.1%, in a late-year budget compromise.
Federal worker unions called the president's latest proposal "insulting," but Congress has a long track record of upping pay.
In an election year, it's probably a safe bet that federal workers are in line for a more than 1% increase in their checks.
One new benefit for federal employees last year will continue in fiscal 2021. They'll all be eligible for up to eight weeks of paid parental leave upon the birth, adoption or fostering of a child.

12%

Trump is eager for the United States to launch a manned mission to Mars, proposing NASA get the largest increase of any federal science agency. But some of the new funding may be coming at the expense of climate research programs.
The space agency would see its budget grow to $25.2 billion, a 12% increase, under the president's fiscal 2021 request.
However, as in previous years, the budget proposal seeks to cut NASA's earth science program and curtail major satellite programs that study climate change.
Overall, NASA's earth science division would get about $1.77 billion, down from the $1.97 billion it received in fiscal 2020.
Congress is likely to resist most of those cuts and will probably shift some of the aggressive spending for Mars back into more long-standing earth science research projects.

Zero

Some of the most notable fights in the budget are likely to occur over programs left out altogether.
The White House seeks to phase out the electric vehicle tax credit for the second year in the row, a priority for the fossil fuel industry.
While there's some bipartisan support for extending the credit, the administration's resistance has so far stymied that effort.
On another front, the president reversed course and would provide no funding in fiscal 2021 for developing the Yucca Mountain nuclear waste repository.

It was a major disappointment for some energy lawmakers who believed the Nevada site was on track after years of political squabbling.
Instead, Trump says he wants to find alternatives to Yucca and opened the door to funding one or more new sites by reviving a nuclear waste funding fee in fiscal 2023.
Other programs again targeted by the White House for elimination — the Abandoned Mine Land program's economic development grants, funding for National Heritage Areas and National Wildlife Refuge Fund payments to local governments — have support in Congress and aren't likely to die this year.

E&E News
Trump Budget Could 'Destabilize' Watchdog – IG
https://www.eenews.net/greenwire/2020/ /stories/1062324745
Kevin Bogardus,

EPA's internal watchdog office, which has tangled recently with political leadership at the agency, would see budget cuts under President Trump's fiscal plan.

The White House's fiscal 2021 budget plan proposed more than $39.8 million for the EPA Office of Inspector General. In addition, the proposal would transfer more than $9.7 million from a Superfund account to the watchdog office, giving it total funding of close to $49.6 million for the year, according to the agency's **congressional justification**.

That equals about a $3.5 million cut for the IG office from its fiscal 2020 funding of nearly $53.1 million. The EPA watchdog has already protested the proposed funding slash, saying it could cripple its investigative and audit work meant to root out fraud, waste and abuse at the agency.

"Simply put, less funding directly correlates to fewer audits, evaluations, and criminal and employee misconduct investigations," said EPA IG Sean O'Donnell in a statement shared with E&E News.

"Further, as many of the audits are congressionally requested, any reduction to the OIG's budget makes it difficult to perform these important, but ultimately discretionary, audits and evaluations. It is critical that my office have the resources available to continue to promote good governance and contribute to improved health and the environment."

Others at the IG office have also pushed back.

"A budget at this level could destabilize the OIG and have an immediate negative impact on the OIG's production capacity and ability to respond to ever-demanding and increased workload requirements," said then-acting EPA IG Charles Sheehan in a Jan. 10 **letter** to Office of Management and Budget Director Mick Mulvaney.

Sheehan added he did not agree with the president's budget request, which would "substantially inhibit" the IG office from performing its duties.

"Many audits are mandated by Congress, and as the OIG attempts to continue to balance its workload with a tight annual budget of $53 million, a budget of $49.6 million would virtually eliminate our ability to perform many discretionary audits and evaluations," he said.

Sheehan also said requests for investigations have not been met "due to a significant lack of resources."

"The OIG has had to inform congressional and other requestors that we cannot undertake a requested review, can only do a portion of the requested work, or will try to do it at a later time," he said.

"These requests include projects that we believe would have significant value, but we must forego due to our significant lack of resources resulting in a diminished capacity to adequately respond," he said.

Sheehan asked that the IG office's requested budget of $59.3 million be recognized instead.

Sheehan is now O'Donnell's deputy at the watchdog office. O'Donnell was sworn in Jan. 27.

EPA often is faced with proposed Trump budget cuts, which are then ignored by Congress. No different is the White House fiscal 2021 budget plan, which would cut the agency's funds by 27%, leaving it with a $6.7 billion budget (*Greenwire*, Feb. 10).
The EPA watchdog office has registered protests against budget cuts in the past. Sheehan wrote a **similar letter** to Mulvaney in February last year.
The watchdog office has often had to make do with a flat budget. EPA's inspector general, however, received a funding boost of roughly $2.8 million more for fiscal 2020 in year-end spending legislation approved by Congress last December (*Greenwire*, Dec. 17, 2019).

This proposed budget cut comes on the heels of conflict between the IG and leadership at EPA.

Outgoing Chief of Staff Ryan Jackson's reluctance to cooperate with various IG investigations sparked a rare "**seven day letter**" warning agency leadership late October last year. Jackson later agreed to sit for an interview for one of those investigations (*Greenwire*, Jan. 28).

IG offices at Energy, Interior

Inspectors general at other energy and environmental agencies fared better under Trump's budget plan for fiscal 2021.

The Department of the Interior's Office of Inspector General would see a funding boost if lawmakers followed the president's fiscal blueprint.

Trump's budget proposal slates more than $59.3 million for the Interior watchdog, according to the department's **congressional justification**. Lawmakers gave the IG office nearly $56 million in fiscal 2020, so that would be about a $3.3 million uptick.

"We appreciate the demonstration of support reflected in this budget," Interior IG office spokeswoman Nancy DiPaolo told E&E News.

"Under the leadership of our new Inspector General Mark L. Greenblatt, the increased funding would support a new initiative focusing on protecting Native American kids in schools, targeting energy fraud, returning millions of dollars back to American taxpayers and conducting aggressive cybersecurity oversight."

Also in fiscal 2021, the White House proposed more than $57.7 million for the Department of Energy's Office of Inspector General, according to **budget documents**. That would be roughly a $3.5 million increase from what Congress appropriated to the IG office for the prior fiscal year.

A DOE IG office spokesman confirmed the watchdog office's proposed budget numbers that E&E News cited in this story but could not offer any more details at this time.

Bloomberg Environment
More Chemical Wastes Released, Recycled in 2018 EPA Says
https://news.bloombergenvironment.com/environment-and-energy/more-chemical-wastes-released-recycled-in-2018-epa-says
Pat Rizzuto

The total amount of production-related waste that industrial and federal facilities reported to the EPA increased from 2017 to 2018, the agency said in Toxics Release Inventory data.

The Environmental Protection Agency said 21,557 industrial and federal facilities released 32.1 billion pounds of 696 chemicals in calendar year 2018, according to figures that were released Tuesday. That compares to 30.57 billion pounds in 2017.

Facilities recycled 53% of these chemicals, treated 26%, disposed of 12% through land, air, or water discharges, and used 10% for fuel, the EPA said.

Airborne emissions of mercury and mercury compounds decreased 6% from 2017 to 2018, the EPA said.

Emissions of dioxins, however, increased 17%, driven largely by one unidentified chemical manufacturing facility that reported releasing 35,000 grams, the EPA said. Dioxins can cause reproductive, developmental, immune, and other problems, and the EPA requires facilities to report releases of 0.1 gram or more.

Regional Highlights

New analyses available this year include profiles of TRI releases in each of the EPA's 10 regions.

EPA's regional analyses highlight interesting trends. For example, California had more than four times the facilities than Arizona in 2018, yet Arizona's emissions were more than four times higher, the EPA said.

In California, 1,208 facilities reported 34.5 million pounds of TRI chemical releases for 2018, a 19% increase from 2017.

In Arizona, 263 facilities reported 171 million pounds of TRI chemical releases for 2018, a 69% increase from 2017.

Also new this year are EPA's summary of TRI reporting by the hazardous waste management and aerospace industries and information about metal mining operations.

Bloomberg Environment

States Say EPA Chemicals Approach 'Unlawful' as Lawsuits Loom

https://news.bloombergenvironment.com/environment-and-energy/states-say-epa-chemicals-approach-unlawful-as-lawsuits-loom

Pat Rizzuto

Democratic attorneys general from 10 states are signaling they may sue the EPA regarding its oversight of chemicals, a half dozen lawyers said in recent interviews.

Their concerns come as the Environmental Protection Agency—for the first time—is routinely examining chemicals that have been used in the U.S. for years, preparing to give the substances a regulatory thumbs up or down.

Before they reach their conclusions, EPA officials should consider all the ways people breathe, ingest, or touch a substance, wrote the top law enforcement officials for Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, Oregon, Vermont, and Washington.

"EPA's failure to consider *all* exposure pathways and hazards to human health and the environment created by such chemicals in its risk evaluations is unlawful and irrational," the attorneys general wrote in comments submitted to the Environmental Protection Agency in December.

But the EPA's draft examination of the solvent methylene chloride, for example, doesn't do that, the attorneys general said. The EPA didn't consider whether people's health could be harmed after being exposed to the solvent through outdoor air they breathe, water they drink or swim in, or contaminated land where they grow food.

"If not corrected," the attorneys general said, the EPA's position of only studying some exposure pathways "would result in equally unlawful and irrational final rulemaking or other follow-on agency action, and would undermine protection of public health and the environment."

TSCA Amendments

EPA oversight of chemicals hasn't historically been challenged in the courts, because under the Toxic Substances Control Act of 1976, the EPA didn't regulate most existing chemicals at all. Nor did the law require the EPA to examine whether chemicals made and used domestically had too much potential to injure people, plants, or animals.

But that is about to change: The TSCA amendments of 2016 require the EPA to start examining those risks, and to regulate chemicals with the greatest chance of hurting people or the environment.

That process is just now playing out. The EPA must release its final risk evaluations for the ongoing uses of the first 10 chemicals—methylene chloride among them—under the TSCA amendments by June. And that process could trigger lawsuits if a state concludes that the EPA's analysis, and any subsequent regulations, wouldn't protect its residents.

'A Very Good Bet'

Just that fact that 10 states coordinated their comments suggests lawsuits are likely, according to Maureen Gorsen, a partner in Alston & Bird LLP's Sacramento office.

"If the attorneys general of 10 states take the time to combine efforts, coordinate, and write a singular comment letter to a federal agency, it's a very good bet that they feel quite strongly about the issue and will be willing to use their prosecutorial power to litigate to test if a court will agree with their view of the law," Gorsen said.

Peter Hsiao, a partner at King & Spalding LLP's Los Angeles office, said more state attorneys general are challenging the Trump EPA.

"Litigation is a real option here, as shown by the recent lawsuit filed by 14 states and the District of Columbia against EPA's changes to its risk management program for chemicals in processing and manufacturing facilities," he said.

A spokeswoman for the office of Massachusetts Attorney General Maura Healey, who took the lead on the letter, said her office will continue to evaluate all legal options. The offices of several other attorneys general signing the letter declined to comment, or didn't reply to a query on whether they're considering suing the EPA if it fails to examine more exposure routes in its final risk evaluations in June.

Chemicals and the Courtroom

Comments from the attorneys general referred to the EPA's draft evaluation of methylene chloride and n-methylpyrrolidone (NMP), another solvent.

But their concerns applied to other chemicals the agency is examining and to the "systematic review" method the EPA uses to decide what scientific data will or won't be used in chemical assessments, and how much weight to give different studies, they wrote.

California's South Coast Air Quality Management District, that state's Division of Occupational Safety and Health, the National Tribal Toxics Council, and the City of New York's Law Department also had objections, according to letters they sent the EPA.

People living or working near sites where methylene chloride is made, processed, used, or disposed could face "substantial" risk from that hazardous air pollutant, according to the South Coast Air Quality

Management District.

"When EPA fails to consider drinking water, air, and soil exposures, it often falls to state, local, and tribal governments to deal with the resulting pollution and to incur the costs of EPA's flawed risk evaluations," Jonathan Kalmuss-Katz, an attorney with Earthjustice, said by email.

"It is therefore unsurprising that those other units of government are pushing back, and if EPA continues to ignores them then these issues will ultimately be decided in court."

State Preemption

States are positioning themselves to challenge the EPA's evaluations, or any follow-on rules, because the EPA's final decisions about a chemical can preempt states' ability to regulate the same compound, said Cynthia AM Stroman, a partner working in King & Spalding LLP's Washington and Houston offices.

The TSCA amendments gave the EPA authority that can preempt some state chemical regulations. For example, when the EPA decides a substance wouldn't pose an unreasonable risk—or conversely, if it would pose too great a risk and must be restricted—the agency's action can trump state regulations,

The TSCA amendments could preempt some state chemical regulations, whether the EPA decides a substance wouldn't pose an unreasonable risk—or conversely, if it would pose too great a risk and must be restricted, the EPA says.

Yet, the amended law did grandfather in many existing state chemical regulations, and offers states several means to still manage chemicals they say pose a risk.

The issues and any potential lawsuits should become clearer after June, assuming the EPA meets its goal of completing its first 10 chemical risk analyses on time, said Steve Owens, a partner at Squire Patton Boggs LLP's Phoenix office.

'Controversy and Confusion'
Several of the states that object to the Trump administration's strategy for managing chemicals had developed their own policies and regulations before the 2016 TSCA amendments and continue to be active in the chemical policy space, said Owens, who served as EPA's assistant administrator of chemical safety and pollution prevention under former President Barack Obama.
Industries were spurred to support the TSCA amendments because they didn't want states issuing divergent regulations. The new law was meant to create confidence in the EPA's oversight of chemicals and support a uniform federal approach to controlling chemicals, he said.

Yet, "the path that EPA has followed" during the Trump administration, Owen said, "has generated more controversy and confusion, than given people assurances the process is working."

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E&E News
Democrats Unveil Legislation Taking Aim at Plastics
https://www.eenews.net/eedaily/2020/ /stories/1062318307
James Marshall

A pair of Democratic lawmakers will introduce a comprehensive bill today that aims to curb plastic pollution by requiring manufacturers to fund recycling programs and putting a temporary halt on issuing permits for new plastic plants.

The "Break Free From Plastic Pollution Act," from Sen. Tom Udall (D-N.M.) and Rep. Alan Lowenthal (D-Calif.), comes as a result of months of public comments and engagement with environmentalists and industry advocates, the lawmakers said on a conference call with reporters yesterday.

Udall and Lowenthal said they were dissatisfied with other efforts in Congress to combat plastic waste, such as the "Save Our Seas (SOS) 2.0 Act," **S. 1982**, a package seeking to clean up ocean trash.
Whereas the "SOS 2.0 Act" proposes a taxpayer-funded initiative that focuses on cleaning up plastic after it becomes waste, Udall and Lowenthal said their **legislation** would enlist companies that produce plastic packaging to help reduce the amount of plastic that enters the waste stream.

"Ours is the only bill in the Congress that deals with the source of the problem," Udall said. "Other bills attempt to deal with our waste once it's already in the environment or dedicate tax dollars to recycling bills that will hardly make a dent in the issue."

The Udall-Lowenthal bill would tackle pollution with 10 measures. Among them is shifting the responsibility of paying for and designing recycling programs from municipalities to plastic producers, an idea known as extended producer responsibility.

"The 'Break Free From Plastic Pollution Act' removes the burden of waste collection and recycling from the cities, from states and, most importantly, from taxpayers and puts it where it belongs — on the producers and the companies putting out these unsustainable products into the marketplace," Lowenthal said.

The bill would establish a national 10-cent bottle fee on drink containers of all materials to incentivize consumers to recycle them. Beverage producers would be entitled to use unclaimed refunds to help pay for recycling collection programs.

Scott Cassel, founder of the Product Stewardship Institute, said these provisions would more fairly distribute the obligation to clean up plastic pollution.

Instead of taxpayers financing local recycling programs, Cassel said, these measures would put the onus on plastic-producing companies and consumers who buy plastic products to boost recycling rates.

Starting in 2022, the legislation would also phase out single-use plastics such as grocery bags, utensils, and expanded polystyrene food and beverage takeout containers.

Udall and Lowenthal credited local governments and states that have pushed for extended producer responsibility and enacted similar plastic bag bans and bottle fee programs. The legislation would allow governments to impose stricter plastic standards at the state and local level.

'Turn off the faucet'

The bill also calls for putting a three-year pause on granting permits to new plastic plants. Plastic is a fossil fuel product that has benefited from historic lows in natural gas prices (*Climatewire*, Jan. 21).

During the proposed permitting pause, the bill would have EPA study the environmental impacts of plastic plants such as ethane crackers in order to issue new regulations. Crackers turn byproducts of natural gas into the building blocks of plastic.

The current lack of regulation, Udall said, has resulted in the "Wild West" for plastic plants to pollute the air and water unchecked (*E&E Daily*, Jan. 31).

Alex Truelove, director of the U.S. Public Interest Research Group's zero-waste campaign, compared the amount of virgin plastic currently entering the marketplace to a bathtub overflowing with water.

"In order to truly fix the problem, you have to turn off the faucet," Truelove said.

EPA would also be tapped to standardize recycling labels. Many of the current labels — like the reduce-reuse-recycle icon with "6" in the center that appears on products such as plastic Solo cups — don't indicate that the material is recyclable in a given jurisdiction because municipal recycling capabilities are so variable.

Among the bill's other provisions are a requirement for plastic drink bottles to use an increasing percentage of recycled content and more stringent rules governing exports of solid waste to developing countries.

Udall, who is not seeking reelection after his term is up at the end of the year, was optimistic that the bill would garner bipartisan support. For now, the Senate version of the bill has four Democratic co-sponsors: Sens. Jeff Merkley and Ron Wyden of Oregon, Cory Booker of New Jersey, and Richard Blumenthal of Connecticut.

"When people realize how important it is to shift responsibility to producers, this proposal will gain more traction," Udall said. "We have seen that when you produce something that the public loves and has huge public support, President Trump has signed those kinds of bills."

E&E News

House Republicans to Release Carbon Sequestration Bill

https://www.eenews.net/eedaily/2020/ /stories/1062319435

Nick Sobczyk

House Republicans plan to unveil legislation this week promoting carbon sequestration, the first piece of a multipronged approach to climate change that House Minority Leader Kevin McCarthy (R-Calif.) has promoted in recent weeks.

McCarthy and other top Republicans will announce the legislation tomorrow. It will likely expand the existing 45Q tax credit for carbon capture and sequestration, with plans to release other proposals on clean energy and conservation down the road.

Rep. Garret Graves (R-La.), ranking member of the Select Committee on the Climate Crisis, said the rollout is "designed to fill in the blanks a little bit."

"This is beginning to put some meat on the bones and rolling out the first phase of legislation," Graves said last night.

It's part of a campaign led by McCarthy to put the GOP on the map on climate policy, as poll after poll shows that young voters care about climate change and believe it is caused by man-made greenhouse gas emissions (*E&E Daily*, Jan. 22). Republicans still largely oppose carbon taxes or greenhouse gas regulations. But they have enthusiastically supported policies aimed at reducing the emissions from continued use of fossil fuels, such as 45Q and **H.R. 1166**, the "Utilizing Significant Emissions With Innovative Technologies (USE IT) Act."

The Internal Revenue Service has not yet implemented that tax credit, drawing ire from members of both parties, but it's nonetheless been a major feature of the carbon capture debate since it was signed into law in 2018.

Graves, for instance, has suggested tweaking it to incentivize natural carbon sequestration and the rebuilding of coastal buffer zones (*E&E Daily*, Oct. 23, 2019).

On the other side of Capitol Hill, Senate Environment and Public Works Committee ranking member Tom Carper (D-Del.) this morning will announce separate legislation to set a federal target for net-zero emissions by 2050.

The "Clean Economy Act" would direct EPA to establish a plan to get to net zero using its existing statutory authority, according to a fact sheet provided by Carper's office.

It's similar to a bill introduced by Rep. Don McEachin (D-Va.) and more than 100 other Democrats on the House side.

"This administration's failure to act on climate change is a dereliction of duty that undoubtedly will be the biggest stain on President Trump's tainted legacy," Carper said in a statement. "But Congress cannot wait for another president to begin moving our country toward net-zero emissions."

The Hill
Bill targets single-use plastics in push to make manufacturers responsible
https://thehill.com/policy/energy-environment/482396-bill-targets-single-use-plastics-in-push-to-make-manufacturers
Rebecca Beitsch

Two congressional Democrats are planning to roll out legislation that would fight plastic pollution by banning certain types of single-use containers and requiring manufacturers to use more recycled content in their packaging.

The legislation from Sen. Tom Udall (D-N.M.) and Rep. Alan Lowenthal (D-Calif.), expected Tuesday, would ban plastic takeout bags, utensils and plastic foam containers that cannot be recycled starting in 2022 and begin a nationwide container deposit system, mirroring programs in the Northeast and other parts of the country that pay consumers 10 cents for every returned beverage container.
But in a fundamental shift to the recycling industry, the onus to collect recycled goods would fall on the manufacturers themselves, a big departure from taxpayer-reliant municipal systems that now collect waste. That effort would be paired with a requirement that producers use more recycled content in their own packaging.

"The public has been told if it says it's recyclable, it's recyclable. We now know that is not what is actually happening out there," said Lowenthal, referencing the plastic goods that have been incinerated or sent to landfills after China announced in 2018 that it would no longer accept many of the world's shipments of so-called recyclables.
China backing away from its role as the clearinghouse for recycled goods leaves few options for the 335 million tons of plastic produced each year. Just 8 percent of plastic waste in the United States is sorted for recycling.

Under Udall and Lowenthal's vision, manufacturers ranging from those making food to home goods would band together to form nonprofits that would be responsible for collecting their wide variety of packing. Over time, producers would be expected to increase the amount of post-consumer materials they incorporate into their own packaging.

"Today's producers have zero responsibility for their product waste and no incentives to reduce wasteful production," Udall said, adding that forcing them to contend with their own waste will change that.

The bill also pushes the Environmental Protection Agency to create a uniform system for recycling and composting labels.

The effort follows one in the initial stages by the private sector that is also looking at reinventing recycling by creating a national set of recycling standards.

The Consumer Brands Association, which represents the companies that manufacture packaged goods, hopes one set of standards will help producers make products they know can be recycled.

Washington Post
A Once-Powerful Montana Mining Town Warily Awaits Final Cleanup of its Toxic Past
https://www.washingtonpost.com/climate-environment/a-once-powerful-montana-mining-town-warily-awaits-final-cleanup-of-its-toxic-past/2020/02/09/514c4220-4943-11ea-bdbf-1dfb23249293_story.html
Kathleen McLaughlin

BUTTE, Mont. — High above this storied copper town, one of the tallest earth-filled dams in the country holds back more than 6.5 trillion gallons of toxic sludge from an open-pit mine.
The dam is set to grow even taller. Yet it is the least of Butte's immediate concerns.
Residents have been waiting years to learn how the Environmental Protection Agency will finish cleaning up a different part of mining's legacy here — the cavernous Berkeley Pit, now a mile-long, 900-foot-deep poison lake, and a vast network of contaminated subterranean tunnels. Together, they constitute the nation's largest Superfund complex. State and federal officials and the company on the hook for cleanup have negotiated privately; the outcome may be revealed within weeks, if not days.
There is both weariness and wariness in the city of 34,000, a fading political and financial powerhouse that remains a Democratic stronghold. Many residents are exhausted by the closed-door dealings, technical and bureaucratic jargon and the seemingly endless process. They are suspicious of regulators' insistence that public input has been critical to their decision-making.
"Butte, Montana, has paid its dues. We deserve to have this place cleaned up right," said Fritz Daily, a retired high school teacher, state legislator and perpetual thorn in the side of mining companies and government officials. In the 1990s, he would stand on the floor of the House of Representatives in Helena and read off a list of alarming statistics about the abandoned mines and their potential risk to drinking water.
"People ask me why I keep doing this, and the thing I always go back to is, people forget how important this community was in the shaping and creating of this great nation," Daily explained recently.
That's not just hometown pride talking. Butte has been called the most mined city in the world, and much of the world's copper once came from here. When the bulk of the mines shut down in the 1980s, the fighting began over how to mitigate the damage and who would pay for it.
On Butte's east side, where 1.5 billion tons of ore were extracted, the terraced scars remain. The Berkeley Pit's dark water is laden with heavy metals, and it has twice killed migrating flocks of snow geese that sought to rest there. Intermittent cannon fire is now used to keep birds away, though humans are welcome to visit. There's even a small information center and gift shop.
These days, the pit's water is treated and sent down the Clark Fork of the Columbia River. Daily and a group of residents have been pushing for the restoration of Silver Bow Creek, which forms the headwaters of the Clark Fork. Discussion continues over a mile-long stretch that goes through Butte but long served more as an industrial sewer than natural waterway. Community factions have only hardened.
"They keep thinking we're going to go away and forget," said Sister Mary Jo McDonald, a retired Catholic nun who wants full transparency with the EPA deal. "My goal is, we get this cleanup done right."
According to Doug Benevento, EPA associate deputy administrator, Butte's problems were allowed to languish. The city's toxic sites, including the Berkeley Pit, were placed on the Superfund cleanup list in the 1980s, but the remediation plans and attempts that followed had no final deadlines. The complexity of what's required and the projected costs are part of the challenge.
"If there is one thing I would note about Butte and some of these other Superfund sites in Montana and elsewhere . . . the political leadership of the EPA should have done a better job of prioritizing these sites and moving them forward," Benevento said in an interview.
The agency made Butte a priority in 2017, and local Superfund managers are quick to point out that nearly $1 billion has been spent to stabilize the mine tailings, cap and plant over many of the waste sites, and treat water from the Berkeley Pit so it can be released and the natural water table protected.
A similar battle over cleanup has been fought some 25 miles away by residents in the tiny town of Opportunity, which was on the processing end of the mining industry's massive operation in Montana. The Supreme Court in December heard arguments on whether they can sue for greater cleanup than what the EPA approved. Legal experts say the case could have national implications.

The plan about to be released for Butte is what's known as a consent decree, a binding agreement reviewed by the federal Justice Department. The document will lay out specifics for mitigating roughly the final 25 percent of Butte's contamination, which could cost an additional $100 million.
Jon Sesso, Superfund coordinator for the local government, is watching closely because it has been named a responsible party given local storm water contamination. Should the negotiations leading up to the consent decree fall through, Butte could be on the hook financially.
"We have to make sure we get the best cleanup possible [and] protect our citizens from the financial exposure of cleanup," he said.
Butte's history by the numbers tells the staggering scale of mining in southwestern Montana. The industry began in the 1860s after prospectors discovered gold, then quickly turned their attention to silver, then copper, the mineral that would draw tens of thousands of immigrants from around the world to mine.
By the late 1800s, as American homes, businesses and factories were being electrified, Butte was supplying more than half of the copper needed for that wiring. At its peak, 10,000 men worked in the mines here, transported hundreds and thousands of feet below the Earth's surface to send back up its mineral riches.
The mines supported the country's mobilization during two world wars. They also sparked labor movements, violent crackdowns on unions, and a deep local mistrust of corporate and government authority. Strikes and the falling price of copper slowed the industry — controlled by the Anaconda Copper Mining Company — while underground work shifted to safer but more visibly damaging open pits. Anaconda sold its holdings in 1977 to Arco, a division of oil giant BP, which several years later suspended all mining in the state.
When the pumps that had been keeping the mines dry were shut off, a 10,000-mile honeycomb of mines under the city quickly flooded, and the Berkeley Pit filled. As Butte's population and economy tanked, the struggle over cleanup began.
About 370 people still work pulling copper and the metal molybdenum out of the area's only remaining active mine, the Continental Pit. Its waste is dumped in what's known as the Yankee Doodle Tailings pond, which is contained by the giant dam that looms, out of sight, above Butte. State officials recently approved a mining company's request to build the dam beyond its current 750-foot height, a move that will extend the pit's life by decades.
The consent decree won't erase what happened in the mines, and the truth is, nobody wants it to. Butte's Uptown hillside is dotted with a dozen iconic gallows frames, the looming, black iron elevator rigs that lowered generations of men underground. They haven't been used in decades but are protected by local law.
One of the most striking, the frame over the Original Mine, is used as a stage for the Montana Folk Festival. And a paved path for walking and biking extends for miles along what used to be a railroad that transported copper and other ore.
Outside the old mine yards, signs list facts about each, including death tolls. An estimated 2,500 men lost their lives.
Still, Butte is focused on getting past the stigma of Superfund. Matt Vincent, who grew up here, served as the local government's chief executive and now works as an industry consultant, said Butte's reputation as a waste site needs a drastic revamp. Given the years of delays and distrust, he knows that won't be easy.
The EPA's Benevento agrees. "You have a citizenry who, because of experience, is wary," he said. "What I've told them is, 'Don't trust us. Watch us.'"

Bloomberg Environment
EPA Skips House Hearing on Lead, Citing Short Notice (2)
https://news.bloombergenvironment.com/environment-and-energy/epa-complains-of-short-time-to-prepare-for-house-lead-hearing
Amena H. Saiyid

The EPA skipped a House hearing Tuesday on the agency's proposed revisions to its lead and copper rule, after complaining of receiving only a six-day advance notice of the event.
The Environmental Protection Agency said the six-day notice is in contrast to the customary two weeks that Congress gives administration witnesses to prepare testimony.

"Given the amount of witnesses present at today's hearing, it appears to be a deliberate attempt to exclude the Trump Administration," the EPA said in a statement.

The chair of the House Energy and Commerce Subcommittee on Environment and Climate Change, Paul Tonko (D-N.Y.), disputed the charge.

"We would have welcomed EPA's testimony today," Tonko said. "No witnesses received earlier notice than EPA."

Alan Roberson, executive director for the Association of State Drinking Water Administrators, said he received a call from the committee on Feb. 3, not earlier as EPA indicated in its release.

"These witnesses came from all over the country" but the EPA officials who are across town couldn't make it, Tonko said.

The hearing was to examine the impact of the EPA's October proposal to overhaul the nation's lead and copper rule, which hasn't been updated since 1991.

The EPA proposal (RIN 2040-AF15) sought to ratchet up current rules on lead pipe replacement rather than require a full ban on use of these pipes. The agency will accept comment on the proposed revisions until Wednesday, Feb. 12, and a final rule is expected by July.

Rep. John Shimkus (R-Ill.), the subcommittee's ranking member, requested permission to include the EPA's complaint as part of the hearing record, but didn't comment on EPA's absence.

(Updated with additional reporting)

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The Hill
Experts Criticize EPA Lead and Copper Rule Revisions
https://thehill.com/policy/energy-environment/482584-experts-criticize-epa-lead-and-copper-rule-revisions
Rachel Frazin

Experts and advocates on Tuesday criticized the Environmental Protection Agency's (EPA) proposed rule to combat lead in the water supply, calling for the agency to require that service lines containing lead be replaced.

Pediatrician Mona Hanna-Attisha, who helped publicize the Flint, Mich., water crisis, said a plan based solely on health protection would eliminate lead from service lines and maximize corrosion control so children are not exposed to it.

"We're never supposed to expose a child to lead," Hanna-Attisha added during a House Energy and Commerce Committee hearing.

One witness, however, argued that requiring service lines to be replaced would be a costly burden that would take resources away from other programs.

Angela Licata, the deputy commissioner of New York City's Department of Environmental Protection, said she "appreciates that EPA's proposal avoids setting unattainable mandates such as a deadline for the replacement of all lead service lines nationwide," according to her prepared remarks.

"Compliance with such a mandate would take decades, cost billions of dollars, and would prevent water systems from allocating their limited budgets to other projects and initiatives that may deliver greater public health benefits," she added.

The EPA's proposed overhaul to the 1991 Lead and Copper Rule, unveiled last year, established a 10 parts per billion (ppb) "trigger" level at which cities would be required to reevaluate their water treatment processes and possibly add corrosion-control chemicals to city water.

At 15 ppb, cities would be required to replace the full length of all of the lead service lines in their system. They would only be required to replace 3 percent of lead service lines each year, less than the current requirement of 7 percent.

Proponents of the change say that the trigger level will allow for more proactive action. However, opponents have said that looser rules on how soon cities should replace their pipes will result in lead remaining in systems for more time and also say the 15 ppb action level should be lower.

"It needs to be lower. It needs to go as low as possible. Five [ppb] would be way better. Zero [ppb] would be great," Mae Wu, the Natural Resources Defense Council's senior director of health and food, said on Tuesday.

Rep. John Shimkus (R-Ill.) said, however, that the Trump administration should get credit for taking some action to revise the rule.

"I was here during the Obama administration," Shimkus said. "Did they promulgate a new lead and copper rule? The answer is no, they did not, so cut the administration a little slack for doing something versus nothing."

According to the Centers for Disease Control and Prevention, no safe blood-lead level has been found for children.

Concerns about lead exposure from drinking water came into the public spotlight in 2015 after the water contamination scandal in Flint.

No EPA representative was not present at Tuesday's hearing. The agency said in a statement that the committee chose to "exclude" it from the hearing by not inviting it until six business days in advance.

Rep. Paul Tonko (D-N.Y.), who chairs the Energy and Commerce Subcommittee on Environment and Climate Change, told reporters that the EPA was given the same time frame as everyone else.

"These witnesses came from far away to offer comments, and we're talking about agency reps that are in town and we're hoping that they would have joined us at the hearing," Tonko said.

Asked whether there would be legislative action on the matter, he replied, "Hopefully there will be legislation that will respond to what is a public health crisis."

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