Message

From: Penberthy, Tania [penberthy.tania@epa.gov]
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To: AO OPA OMR CLIPS [AO_OPA_OMR_CLIPS@epa.gov]
Subject: Daily Clips, July 24th, 2018

Air Pollution

Bloomberg Environment - Cement Makers Won't Need More Air Pollution Controls, EPA Says

Los Angeles Times - Judge Kavanaugh Could Give Conservatives the Vote They Need to Rein in EPA Rules on Climate Change

Auto

E&E News - Calif. Waiver Creates 'Cooperative Federalism' Test for EPA

EHS Daily Advisor - Delay in Glider Vehicle Enforcement Results in Two Suits for EPA

Forbes - Trump's EPA Is Poised to Void California's Greenhouse Gas Emission Standards

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E&E News - Wheeler's Ready to Expand Sorghum's Role in RFS

Budget

Bloomberg Environment - EPA, Other Agencies FY 2019 Funding as Approved by Senate Panel

Chemical Watch - House Bill Would Cut US EPA Budget By $100M

Politico - Trump Administration 'Concerned' At Extra EPA, Science Funding in Senate Bill

Chemical Safety

Bloomberg Environment - EPA Pushes Back Chemical Safety Rollback Amid Data Dispute

Bloomberg Environment - House Bill Decentralizing EPA Chemical Reviews Gets New Chance

Bloomberg Environment - Savogran to Offer Paint Remover Line Without Two Spurned Solvents

GMOs

Bloomberg Environment - New GMO Cotton Could Give Farmers Leg Up in Endless Weed Fight

Grants

Environmental Protection - Two Nevada Agencies Get Water, Radon EPA Grants

Policy Chief

E&E News - Ex-Inhofe Aide Picked to Lead Policy Shop

Pebble Mine
E&E News - Foes in Pebble Mine War Scrutinize Wheeler's Ties to Project

Power Plant Cooling
Bloomberg Environment - Power Plant Cooling Regulations Upheld in Appeals Court

E&E News - Court Backs Hot-Button Obama Power Plant Rule

Superfunds Clean Up
Bklyner – EPA Marks Final Phase of Gowanus Canal Dredging Pilot

Bloomberg Environment - More Incentives for Faster Superfund Cleanups in EPA Game Plan

Air Pollution

Bloomberg Environment
Cement Makers Won't Need More Air Pollution Controls, EPA Says
https://bnanews.bna.com/environment-and-energy/cement-makers-wont-need-more-air-pollution-controls-epa-says
Posted: July 24th, 2018 @ 9:44am By: Andrew Childers

Cement manufacturers won't have any new toxic pollution control requirements, but the EPA is changing standards for monitoring emissions from the cement making process.

The current hazardous air pollutant emissions standards for the manufacture of the popular Portland cement are sufficient to protect public health, the Environmental Protection Agency said in a final rule to be published in the Federal Register July 25. Portland cement, the most commonly used type of cement, is a basic ingredient of concrete, mortar, stucco, and non-specialty grout.

The EPA's action spares the industry the prospect of installing costly new controls for pollutants such as mercury, dioxins, and hydrogen chloride at their facilities.

The final rule updates the monitoring requirements for cement manufacturers that the EPA said would improve compliance with the pollution control requirements.

Los Angeles Times
Judge Kavanaugh Could Give Conservatives the Vote They Need to Rein in EPA Rules on Climate Change
http://www.latimes.com/politics/la-na-pol-kavanaugh-environment-20180723-story.html
Posted: July 23rd, 2018 @ 1:15pm By: David G. Savage

In its most important environmental ruling of recent decades, the Supreme Court decided in 2007 that the greenhouse gases blamed for warming the planet can be regulated as air pollutants under the Clean Air Act of 1990.

It was a pivotal opinion that opened the door for the Environmental Protection Agency to impose new regulations on autos, power plants, manufacturers and others, to address climate change as well as the dirty air targeted by the original law.

But it came on a 5-4 vote, with Justice Anthony M. Kennedy joining the four liberals and over a fierce dissent by Chief Justice John G. Roberts Jr.

Now as federal appellate Judge Brett M. Kavanaugh seeks to replace the retiring Kennedy on the Supreme Court, Kavanaugh's 12-year record of skepticism toward such agency actions puts the landmark decision and other environmental protections at risk. Environmentalists fear that if Kavanaugh joins the court, he would vote to block anti-pollution regulations for decades, long after President Trump has departed.

"He would be a disaster for the environment," said Pat Gallagher, legal director for the Sierra Club. "He has a disdain for regulation, particularly from the EPA. Kennedy was the swing vote in this area. If we have to wait for Congress to act on climate change, we are doomed."

While serving on the U.S. Court of Appeals for the District of Columbia, President Trump's nominee for the Supreme Court has been a steady "no" vote on climate change regulations.

When joined by fellow conservatives, he wrote opinions rejecting EPA rules to limit greenhouse gases or air pollution that blows across state lines. And when the majority upheld regulations, including limits on power plants that pump out carbon pollution or put toxic mercury in the air, Kavanaugh filed long dissents, usually arguing that Congress, not the EPA, is the only body with the power to take such steps.

"EPA's well-intentioned policy objectives with respect to climate change do not on their own authorize the agency to regulate," he wrote last year in a 2-1 ruling that struck down a rule that required makers of air conditioners, refrigerators and aerosols to phase out the use of hydroflourocarbons, or HFCs. These chemicals are powerful producers of heat-trapping gases, about 1,300 times more than carbon dioxide. Safe substitutes are now on the market, EPA said.

Kavanaugh's opinion in Mexichem Fluor vs. EPA was a victory for a Mexican chemical company that produces the outdated, but cheaper, HFCs. By contrast, the largest American firms in the market, led by Honeywell, joined in support of EPA's rule, noting that they had invested more than $1 billion in the new generation of refrigerants. In late June, two days before Kennedy announced his retirement, lawyers for Honeywell and the Natural Resources Defense Council filed separate appeals in the Supreme Court urging the justices to overturn the 2-1 ruling.

"His decision has utterly crippled this program and left EPA with no way to curb HFCs," said David Doniger, a lawyer for NRDC.

Kavanaugh insisted the case was about the "separation of powers," not environmental rules. "Congress's failure to enact general climate change legislation does not authorize the EPA to act," he wrote.

It is a familiar theme of his opinions. He is deeply skeptical of costly government regulations, and especially so when Congress has not spoken clearly.

UCLA law professor Ann Carlson, who teaches environmental law, describes him as a "more polite version of Justice [Antonin] Scalia. He will acknowledge the existence of climate change, say that it's a compelling public policy problem, say that Congress could and should do something, and then eviscerate EPA's attempts to address the problem."

Conservatives applaud Kavanaugh's approach and argue he is enforcing the Constitution's principle that Congress, not agency regulators, make the law.

"I don't see a hostility to environmental regulations in his opinions," said Jonathan H. Adler, a law professor at Case Western Reserve in Cleveland. "He is skeptical of agencies extending their mandates based on old statutes to deal with new problems. It may be true that creates greater challenges when Congress is not in the game. But he believes, correctly, the agency's power comes from Congress."

During the Obama era, when Congress stalled on immigration and climate change, the White House turned to executive orders and agency regulations to carry out its progressive agenda. This in turn triggered a backlash on the right, where there are calls to rein in the "administrative state" and overturn the "Chevron doctrine," which says judges should usually defer to agency regulators.

Using the authority granted by the 2007 decision, President Obama pressed forward with rules to limit greenhouse gases from cars, trucks, power plants and factories, among others.

In Massachusetts vs. EPA, the five justices in the majority pointed to Congress' broad definition of air pollution. It referred to "any pollution agent" that would "endanger public health and welfare," including "effects on weather … and climate." They said this surely includes greenhouse gases. The four conservatives read the same words and disagreed, arguing climate change was not envisioned by the law.

In the dispute over the refrigerating chemicals, EPA relied on a provision of the Clean Air Act that said ozone-depleting chemicals shall be "replaced by" safer substances. A second provision said EPA should issue rules to prevent the use of "any substitute substance" that would "present adverse effects to human health or the environment" whenever a better alternative was available.

In 2015, EPA under Obama said that while HFCs did not deplete the ozone layer, they should be phased out now because much better alternatives are available. But Kavanaugh said this rule was illegal because the law authorized only one switch.

It is "a one-time occurrence," not "a never-ending process," he said. "EPA's current reading stretches the word 'replace' beyond its ordinary meaning." In his view, EPA was using a law that dealt with ozone and changing it to address climate change. "EPA has tried to jam a square peg … into a round hole," he wrote. He was joined by Judge Janice Rogers Brown, who, like Kavanaugh, was appointed by President George W. Bush.

Judge Robert Wilkins, an Obama appointee, dissented and said Kavanaugh, not EPA, had misread the law. "It is evident Congress desired the safe alternatives list to be a fluid and evolving concept that promotes those alternatives that pose the least overall risk to human health and the environment," he wrote.

In response to the decision written by Kavanaugh, the California Air Resources Board in March adopted the tougher EPA rules limiting the use of the outdated refrigerants. "The board's action preserves the federal limits on

the use of these powerful chemicals and refrigerants, and provides more certainty to industry," Mary D. Nichols, the board chair, said in a statement. "We applaud the actions of many industries, which already have made significant investments in developing and using more climate-friendly alternatives to the high-global warming HFCs."

But California's strict auto emissions standards that limit carbon pollution won't be as easy to resolve. Since 1970, federal law has given California an exemption to adopt its own pollution controls for autos, even if they are tougher than the federal rules. But in April, Trump administration officials signaled they would ease federal fuel-emission targets that kick in after 2020 and end California's waiver that permits it to set its own standard.

"That will be a major issue of litigation with a huge impact," said Harvard law professor Richard Lazarus. "I can't say how Judge Kavanaugh would react, but I can say Justice Kennedy would have been skeptical of taking away the state's power in this area."

He predicted Kennedy's retirement could have a major impact in two other areas of environmental law: clean water and endangered species. The justices were closely split, with Kennedy in the middle, over whether EPA and the Army Corps of Engineers had broad authority to prevent pollution in wetlands and tiny streams, or only narrowly in "navigable waters," such as rivers and bays. The issue has been tied up in regulation, but will come back for a decision in the high court.

Disputes over endangered animals involve property law. And property rights advocates argue that federal restrictions on habitats to protect endangered animals violate the Constitution's provision that says, "private property shall [not] be taken for public use without just compensation."

"You can rest assured that with Kavanaugh on the court, those constitutional claims will be back," Lazarus said. "And environmentalists have reason to worry."

Auto

E&E News
Calif. Waiver Creates 'Cooperative Federalism' Test for EPA
https://www.eenews.net/greenwire/2018/07/24/stories/1060090193
Posted: July 24th, 2018 By: Maxine Joselow, E&E News reporter

When Andrew Wheeler became EPA acting administrator, he promised a federal-state partnership.

"No. 1, we need to provide certainty to the states," Wheeler vowed in his first speech at the agency's helm (E&E News PM, July 11).

"When Congress established the EPA's authority, it intended states to be partners in our effort to protect the environment and public health."

Fast-forward to this week: Wheeler is expected to propose revoking California's authority to regulate greenhouse gas emissions from vehicles.

EPA and the National Highway Traffic Safety Administration will not explicitly revoke the state's Clean Air Act waiver for greenhouse gases. Instead, they will take comments on the legality and necessity of the waiver (E&E News PM, July 19).

Many see that move as a retreat from "cooperative federalism," in which states adhere to the minimum federal standards but can experiment with stricter rules.

"Restoring cooperative federalism has been a theme of this administration," said Janet McCabe, who was acting EPA air chief under President Obama. "The California waiver is sort of a case in point to illustrate whether this administration is really serious about the principles of cooperative federalism."

And Ann Carlson, co-director of UCLA's Emmett Institute on Climate Change and the Environment, said rescinding California's waiver would actually create more regulatory uncertainty, not less, for the state.

"It's hard to say that this is regulatory certainty when California's been operating with a waiver for years," Carlson said. "It has been planning its entire greenhouse gas emissions programs on this waiver."

Scott Pruitt, who resigned as administrator July 5 in a hailstorm of ethics allegations, made cooperative federalism a focus of his time at the agency's helm. He talked up the idea of state and federal regulators working collaboratively without "one-size-fits-all" mandates from Washington.

"In just one year, we have made tremendous progress implementing President Trump's agenda by refocusing the Agency to its core mission, restoring power to the states through cooperative federalism and adhering to the rule of law," Pruitt said in a statement about his first year at EPA. "The American people can now trust that states and stakeholders will be treated as partners."

But Pruitt's interpretation of cooperative federalism was shaded by the red-state, blue-state divide (Climatewire, April 11).

In announcing his decision to rewrite the Obama-era clean car rules, Pruitt signaled his revised program would force California to follow federal standards.

"Cooperative federalism doesn't mean that one state can dictate standards for the rest of the country," he said in a statement.

Irene Gutierrez, a Natural Resources Defense Council energy attorney, said rescinding California's waiver would "certainly be at odds with Scott Pruitt's general philosophy of honoring the authority of states to do their own thing."

Jody Freeman, director of the environmental and energy law program at Harvard Law School, concurred.

"Even without Pruitt at the helm, the theory of the EPA is still that states should be in the lead," Freeman said. "Nobody's taken that back. Andy Wheeler has not announced a departure from that approach. But this flies directly in the face of respect for state primacy."

She added, "So state primacy seems to be the agenda when it's every other state. But when it's California, the agenda seems to be pre-emption."

Wheeler's options

Wheeler could take several paths on the California waiver.

First, he could argue California lacks authority to regulate fuel economy under the 1975 Energy Policy and Conservation Act, which gives that power solely to the federal Transportation Department.

But that argument has failed in court before.

In the landmark 2007 Supreme Court case Massachusetts v. EPA, the agency argued it shouldn't be required to regulate tailpipe greenhouse gas emissions because another agency — DOT — was already regulating fuel economy.

But in its 5-4 decision, the Supreme Court ruled that "the fact that DOT's mandate to promote energy efficiency by setting mileage standards may overlap with EPA's environmental responsibilities in no way licenses EPA to shirk its duty to protect the public 'health' and 'welfare.'"

Also under the George W. Bush administration, automakers sought to challenge California's clean cars program, but several district courts rebuffed their attempts.

A second argument for Wheeler is that California lacks "compelling and extraordinary conditions" to justify a waiver, as required by Section 209 of the Clean Air Act, Carlson said.

"But it's very hard to say that California doesn't have 'compelling and extraordinary' circumstances for conventional pollutants," Carlson said. "As we've seen in the past several years, California is being hammered by the effects of climate change, between droughts, water shortages and wildfires."

Another possibility is Wheeler will also attack California's mandate for electric car sales. The program that forces automakers to sell a minimum number of electric vehicles is a potential target for EPA, sources familiar with the plan told Bloomberg News.

In addition, EPA and NHTSA are expected to solicit public comment on freezing fuel economy targets at 2020 levels through 2026. That will set up more legal battles with California and 13 other states that follow its tailpipe rules.

"I expect a barrage of litigation," Freeman said.

EHS Daily Advisor
Delay in Glider Vehicle Enforcement Results in Two Suits for EPA
https://ehsdailyadvisor.blr.com/2018/07/delay-glider-vehicle-enforcement-results-two-suits-epa/
Posted: July 24th, 2018 By: William C. Schillaci

Environmental groups and, collectively, 16 state attorneys general (AGs) have filed two separate lawsuits against the EPA for its decision to suspend by 1 year enforcement of the Agency's emissions requirements for glider vehicles

regulated under the EPA's Phase 2 rule for medium- and heavy-duty engines and vehicles (October 25, 2016, Federal Register (FR)). The decision to suspend, contained in memos exchanged by the EPA's Office of Air and Radiation (OAR) and the Office of Enforcement and Compliance Assurance (OECA), has been characterized by the petitioners as one of the last deregulatory actions by ex-EPA Administrator Scott Pruitt.

"Over and over again, the Trump EPA has sided with corporations over New Yorkers," said New York State AG Barbara Underwood, one of the petitioning parties. "Even on Scott Pruitt's very last day in office, he made sure to provide polluters with a parting gift."

The U.S. Court of Appeals for the D.C. Circuit responded positively to the environmental group petition, ordering that the 1-year enforcement suspension be stayed while the court considers the case.

Gliders—New Vehicles or Old?

Gliders are medium- and heavy-duty trucks that are assembled by combining certain new truck parts (that together constitute a glider kit) with a refurbished power train—the engine, the transmission, and typically the rear axle—of an older truck. By some estimates, gliders generate 20 to 40 times the emissions of hazardous air pollutants that new vehicles produce.

In the 2016 rule, the EPA took the position that gliders are new vehicles that are subject to new vehicle standards. Under the rule, companies were precluded from manufacturing more gliders than they had manufactured in any one year in the period 2010–2014 unless those newly assembled vehicles met the standards for emissions of greenhouse gases and criteria air pollutants in force the year they are assembled. That requirement took effect January 1, 2018.

But glider manufacturers, which meet the definition of small businesses, have contended that adding new parts to an old truck does not make it new; in other words, gliders should remain subject to the emissions standards that were in effect when the power train was first manufactured. In letters to the industry, Pruitt stated that he agreed with this interpretation and followed with a proposal to repeal the Phase 2 standards for gliders (November 16, 2017, FR).

No Action Assurance

In the first EPA memo, dated July 6, 2018, the OAR asked the OECA to exercise its enforcement discretion—code words for taking no enforcement action—for up to 1 year with regard to glider manufacturers and their suppliers while the OAR undertakes "additional evaluation of a number of matters required before it can take final action on the November 16, 2017, proposal."

In the second memo, also dated July 6, 2018, the OECA responded that it was providing a "no action assurance" either until July 6, 2019, or until the effective date of a final rule extending the compliance date applicable to small manufacturers of glider vehicles. Essentially, the assurance allows manufacturers to continue to build gliders above the limits set in the 2016 rule without fear of enforcement.

As noted above, the D.C. Circuit stayed the no-action assurance pending further consideration by the court.

'Super-Polluting' Trucks

"By removing limits on the production of super-polluting 'glider' trucks, the EPA is breaking the law and jeopardizing the health and safety of New Yorkers—who would face dangerous increases in air pollution and tens of millions of dollars in damages to their health," said Underwood.

Forbes

Trump's EPA Is Poised to Void California's Greenhouse Gas Emission Standards
https://www.forbes.com/sites/greggardner/2018/07/23/trumps-epa-is-poised-to-void-californias-greenhouse-gas-emission-standards/#3f2c157e30bf
Posted: Jul 23rd, 2018 @ 2:14pm By: Greg Gardner

The Trump administration is planning to revoke California's authority to regulate greenhouse gas emissions from vehicles' tailpipes as early as this week, according to a Bloomberg report.

The move, which has been expected for some time, would escalate an already bitter legal fight between states that account for about one-third of the U.S. automobile market and a climate change-denying federal administration intent on dismantling seemingly every environmental regulation established and enforced by the Obama administration.

In 2009, the federal government authorized California to set emission standards for cars and trucks that are more stringent than those set by the federal Environmental Protection Agency. The fight has implications far beyond California because nine other states already adopt the California standards. In May, California, 16 other states and the District of Columbia filed a lawsuit to protect their authority to enforce those tougher standards.

"We have the law on our side, as well as the people of the country and the people of the world," Dan Sperling, a member of the California Air Resources Board, told Bloomberg.

A CARB spokesman declined to comment further until EPA announces its next move.

Automakers and its advocates such as the Alliance of Automobile Manufacturers want one national set of rules for both emissions and greenhouse gases. Without a national regulatory framework, the California-led states, which together account for about one-third of the U.S. new vehicle market, could create a separate market, raising complexity and costs for the industry.

Last month AAM urged the federal EPA to encourage incentives and infrastructure investments for electric and hydrogen-powered vehicles. An AAM spokesman could not be reached for comment on reports the Trump administration plans to take away California's power to regulate emissions and mandate a certain level of sales for electrified and hydrogen-powered vehicles.

The Trump administration has proposed fuel economy standards that would freeze the Obama targets at 2020 levels and require no improvement beyond that.

Transportation is the largest source of climate-changing greenhouse-gas pollution in the United States, and the biggest share of that comes from cars and trucks, according to data from the U.S. Energy Information Administration and the EPA.

Environmental groups came to California's defense.

"In his zeal to make America polluted again, Mr. Trump not only wants to roll back federal rules saving gas and pollution but prevent California and other states from protecting their own people," said Dan Becker, director of the Washington, D.C.-based Safe Climate Campaign.

Frank O'Donnell, president of Clean Air Watch, called any decision to take away California's regulatory authority "an outrageous attach on public health and state's rights.

"It's a dumb move for an administration that claims it wants peace, because this will lead to an emissions war: progressive states versus a reactionary federal government. The big question: who will the car companies back?"

American consumers aren't embracing electric vehicles, but the industry is investing billions of dollars in them, both to improve fuel economy and because electric powertrains are the foundation of the ride-hailing and, eventually, autonomous fleets that will soon become a significant component of the transportation menu in large cities

General Motors plans to introduce 20 new electric models by 2023. Ford is investing $11 billion to offer 40 hybrid or fully-electric vehicles globally by 2022.

Last year in the U.S. zero-emission vehicles represented only 1.15% of industry sales. But California and the other states, mostly on the West Coast and New England, are requiring that electrified or hydrogen-fueled vehicles account for about 15% of sales by 2025.

But China and most European countries are setting ambitious targets for sales of electric and other clean-fuel vehicles. For example, the U.K. and France have announced plans to phase out and by 2040 ban sales of new cars that burn fossil-fuels.

Biofuels

E&E News
Wheeler's Ready to Expand Sorghum's Role in RFS
https://www.eenews.net/greenwire/2018/07/24/stories/1060090187
Posted: July 24th, 2018 By: Marc Heller, E&E News reporter

While corn farmers struggle for friendlier ethanol policies from EPA, a less prominent ingredient for renewable fuel — sorghum — is about to receive a boost from the agency.

EPA acting Administrator Andrew Wheeler will announce today an expanded role for sorghum in the renewable fuel standard, responding to a campaign by companies to make the crop more competitive.

Wheeler is set to appear with lawmakers and representatives of agricultural organizations at EPA headquarters, in an event with political overtones. Pro-biofuel lawmakers were openly critical of the agency for moves that appear to move away from ethanol mandates while Scott Pruitt was administrator.

In an advisory, EPA said Wheeler would make an announcement related to pathways for sorghum to qualify for the renewable fuel standard.

Sorghum, used for sugar and grain and as forage for livestock, is grown in 21 states. Farmers planted about 5.6 million acres in 2017, with Kansas, Texas and Colorado growing the most, according to the National Sorghum Producers, a trade group.

A spokeswoman for the sorghum producers declined to comment on the forthcoming announcement, in which the group was set to participate.

Although sorghum produces as much ethanol per bushel as other feedstocks and needs only one-third as much water, it has been a minor player in the RFS. More favorable regulations, such as pathways for sorghum-derived diesel fuel, would make sorghum more competitive with corn, supporters say.

Some plants that produce ethanol from sorghum have installed technology to separate sorghum grains from distillers oil, lawmakers told EPA in a letter in March 2017. Because sorghum oil hasn't been approved by EPA to produce biofuel under the RFS, however, it is at a two-cent-per-pound disadvantage to corn oil, they said.

Part of the regulatory hurdle has been demonstrating that using sorghum as a fuel source doesn't increase greenhouse gases, over other feedstocks.

EPA started to move in a more favorable direction toward sorghum in December, declaring that using distillers sorghum oil as a feedstock produces no additional greenhouse gas emissions. The agency said sorghum-derived biodiesel, heating oil and other fuel would meet the regulatory threshold of a 50 percent reduction in greenhouse gases to quality as advanced biofuel.

EPA published that analysis in the Federal Register and sought public comment for 30 days before crafting a final determination.

Sorghum's potential as a feedstock for cellulosic biofuel has been in the background at EPA for several years. In December 2014, the agency said it anticipated allowing sorghum-derived biofuels to qualify for RFS credits — called renewable identification numbers — depending on the technology used to produce them (Greenwire, Jan. 5, 2015).

In response to that notice, the National Sorghum Producers told EPA it would work with officials toward certifying hybrid varieties that could meet the federal requirement for 75 percent adjusted cellulosic content — which in turn would allow EPA to consider ethanol from biomass sorghum as 100 percent cellulosic.

Officials haven't taken final action on that issue. Other biofuel-related petitions also await attention at EPA for a range of sources including cottonseed oil, sugar beets and pennycress oil.

Budget

Bloomberg Environment

EPA, Other Agencies FY 2019 Funding as Approved by Senate Panel

https://bnanews.bna.com/environment-and-energy/epa-other-agencies-fy-2019-funding-as-approved-by-senate-panel

Posted: July 23rd, 2018 @ 3:43pm

The Environmental Protection Agency, Interior Department, and other land management agencies would receive $7.58 billion more than requested under S. 3073, the fiscal 2019 Interior-Environment spending measure approved by the Senate Appropriations Committee.

The measure could be included in the Senate substitute to a House-passed minibus package (H.R. 6147) containing the Interior-Environment and Financial Services spending bills.
When emergency funding provided in fiscal 2018 for wildfire and other disaster relief is excluded, the total appropriations provided—$35.9 billion—would be a $674.4 million reduction from the fiscal 2018 level.

The measure would provide $8.06 billion for the EPA, the same as under the fiscal 2018 omnibus spending law (Pub. L. No. 115-141) and $1.87 billion more than the administration's request.
The Interior Department would receive discretionary appropriations totaling $13.2 billion, $56 million more than in fiscal 2018 and $2.58 billion more than requested.

"This measure is the product of a bipartisan effort and makes appropriate investments in our federal land management agencies, Native American programs, and important cultural institutions," Senate Appropriations Chairman Richard Shelby (R-Ala.) said in a June 14 news release following his committee's approval of the bill.

ENVIRONMENTAL PROTECTION AGENCY

The EPA's major programs would receive the following amounts:

Program (dollars in millions)	Measure	Vs. FY 2018	Vs. request
State and Tribal Assistance Grants (STAG)	$3,575.0	+$12.9	+$645.6
Environmental programs and management	$2,598.0	$0.0	+$813.1
Hazardous Substance Superfund	$1,091.9	$0.0	+$3.1
Science and technology	$706.5	$0.0	+$257.5

Drinking Water

The measure would provide funding through the STAG allocation for capitalization grants to state revolving funds (SRF) for clean water and drinking water:

- $1.39 billion for the Clean Water SRF, slightly more than in fiscal 2018 and requested.
- $864 million for the Drinking Water SRF, about $1 million more than the fiscal 2018 and requested level.

The bill would provide $63 million for the Water Infrastructure Finance and Innovation Act (WIFIA) program. Of that, $55 million would go to direct loan subsidies supporting as much as $6.1 billion in outstanding principal, according to the committee report. The bill would direct the other $8 million to WIFIA administrative expenses.

The measure would maintain a requirement that all iron and steel products used in projects financed by state revolving funds be produced in the U.S., as well as the EPA's authority to waive that requirement in limited circumstances.

EPA Policy Riders

The measure would extend a policy that requires the EPA, along with the Energy and Agriculture departments, to ensure that federal policy treats emissions from burning woody biomass as carbon neutral. The agencies would have to encourage private investment in the biomass supply chain and recognize state efforts to produce and use forest biomass.

The measure would continue to bar the EPA from adopting any rules requiring a permit to emit greenhouse gases from livestock operations. The agency also couldn't adopt regulations that impose reporting requirements regarding emissions from manure management systems.
The measure would extend a prohibition on regulating lead ammunition or fishing tackle under the Toxic Substances Control Act.

The bill omits a rider included in the House-passed version of H.R. 6147 that would repeal the 2015 Waters of the U.S. rule issued jointly by the EPA and the Army Corps of Engineers.

INTERIOR DEPARTMENT

Discretionary funding for the Interior Department's major offices would be as follows:

Agency (dollars in millions)	Measure	Vs. FY 2018	Vs. request
National Park Service	$3,215.6	+$13.4	+$513.6
Bureaus of Indian Affairs and Education	$3,075.0	+11.4	+$660.8
U.S. Fish and Wildlife Service	$1,574.9	-$19.7	+$348.8
Bureau of Land Management	$1,343.4	+$11.5	+$320.1
U.S. Geological Survey	$1,148.5	$0.0	+$288.8
Office of Surface Mining Reclamation and Enforcement	$252.9	-$2.6	+$131.2
Office of Inspector General	$52.5	+$1.5	$0.0

The bill doesn't include provisions from the House's Interior-Environment measure related to expediting the California Water Fix project, prohibiting hunting and fishing restrictions on federal land, or directing the Interior Department to delist the gray wolf under the Endangered Species Act.

Bureau of Land Management

Most of the $1.34 billion in discretionary funds provided to the Bureau of Land Management (BLM) would be for the "Management of Land and Resources" heading.

The bill would accept the administration's request to restructure several accounts. It would replace "wildlife and fisheries," which received $115.8 million in fiscal 2018, with a "wildlife and aquatic habitat management" subheading that would receive $182.5 million, $63.1 million more than requested.

Other major accounts under that heading are summarized below:

Program (dollars in millions)	Measure	Vs. FY 2018	Vs. request
Land resources	$211.7	-$36.5	+$38.0
Energy and minerals	$196.1	+$2.1	+$11.1
Workforce and organizational support	$181.3	+$3.3	+14.0
Resource protection and maintenance	$133.2	+$10.0	+$59.7

BLM would be allowed enter into agreements lasting as long as 10 years with nonprofits and other organizations to care for wild horses and burros on private land. Neither the agency, its contractors, nor states receiving excess wild horses or burros could kill them or sell them to be killed and processed into commercial products.

The committee report would encourage BLM to allow grazing permit holders to access unused grazing areas if they can't use their permitted areas due to drought or wildfire.

Fish and Wildlife Service

Of the $1.57 billion appropriated to the U.S. Fish and Wildlife Service (FWS), resource management accounts would receive $1.29 billion, an increase of $13.1 million from fiscal 2018 and $161.4 million more than requested.

Major allocations within that amount would be as follows:

Account (dollars in millions)	Measure	Vs. FY 2018	Vs. request
National Wildlife Refuge System	$491.2	+$4.4	+$18.1
Ecological services	$250.0	+$2.2	+$38.2
Fish and aquatic conservation	$165.2	+$0.6	+$31.3
Conservation and enforcement	$146.9	+$5.6	+$16.7

The measure would continue to block FWS from finalizing rules related to the sage grouse. The agency announced in September 2015 that it wouldn't list the bird under the Endangered Species Act. Listing the sage grouse could

have blocked mining, energy production, and other development within habitat areas or required companies to mitigate damage to protected land. The bird's habitat includes parts of 11 Western states.

The measure also would direct FWS to implement a marking system for salmon stocks released from federal fish hatcheries for harvesting. The marks would have to be easily identifiable by commercial and recreational fishers.

National Park Service

Funding for the National Park Service (NPS) would include:

Program (dollars in millions)	Measure	Vs. FY 2018	Vs. request
Operation of the National Park System	$2,500.4	+$22.4	+$75.3
Construction	$364.7	+$5.0	+$123.4
Land acquisition and state assistance	$174.4	-$6.5	+$175.7
Historic Preservation Fund	$88.9	-$8.0	+$56.2

The NPS Centennial Challenge, which supports projects to improve visitor service and outreach to communities, would receive an unrequested $23 million, the same as in fiscal 2018.

Offshore Energy

The measure would provide the requested $179.3 million to the Bureau of Ocean Energy Management (BOEM), which oversees energy leasing in offshore areas. That amount would be $8.27 million more than fiscal 2018.

That figure would be partially offset by $49.8 million collected from rental receipts for a net appropriation of $129.5 million.

The bill would facilitate a potential reorganization of BOEM by allowing the Interior Department to transfer funds to successor offices or bureaus from accounts that could be affected.

The Bureau of Safety and Environmental Enforcement (BSEE), which regulates offshore drilling safety, would receive a total of $187.2 million, as requested, a slight increase from fiscal 2018.
BSEE would offset a portion of that figure with $65.9 million in inspection fees and other collections. The agency's net appropriation would be $121.4 million, $12.8 million more than in fiscal 2018 and $2 million more than requested.

BSEE would have to use at least half of the inspection fees it collects to expand its capacity and expedite its review of drilling applications.

The bill would set fees for safety inspections of offshore energy facilities at the same levels as in fiscal 2018:

- $10,500 for facilities with processing equipment and without wells.

- $17,000 for facilities with 10 or fewer wells, regardless of whether they are active.
- $31,500 for facilities with more than 10 wells.

Drilling rig inspection fees would be $30,500 per inspection for rigs operating in depths of 500 feet or more and $16,700 per inspection for rigs operating in depths of less than 500 feet.

U.S. FOREST SERVICE

The U.S. Forest Service, part of the Agriculture Department, would receive $6.3 billion. That would be $363.8 million more than in fiscal 2018 and $1.64 billion more than requested.
Funding for major Forest Service programs would include:

Program (dollars in millions)	Measure	Vs. FY 2018	Vs. request
National Forest System	$1,937.7	+$13.9	+$217.7
Capital improvement and maintenance	$434.0	$0.0	+$354.3
State and private forestry	$334.0	+$4.4	+$161.7
Forest and rangeland research	$300.0	+$3.0	+$41.2

The balance of funding for USDA programs would be provided under the Agriculture-FDA spending measure that also may be included in the Senate substitute to H.R. 6147.

WILDFIRE SUPPRESSION

The measure would provide a combined $4.35 billion for wildfire suppression activities conducted by the Interior Department and Forest Service.

- $886.2 million for fire operations.
- $229.9 million for other operations, such as fuels management and rehabilitating burned areas.

The wildfire funding would exceed the 10-year average cost for fire suppression, according to the committee report. The fiscal 2018 omnibus spending law allows the nondefense spending cap to be adjusted upward for wildfire suppression costs that exceed that average, starting in fiscal 2020. The additional funding in the measure would provide budget stability for the Interior Department and Forest Service until that becomes available, according to the committee report.

PREVIOUS ACTION

The Senate Appropriations Committee approved a draft version of the Interior-Environment spending bill 31-0 on June 14. Sen. Lisa Murkowski (R-Alaska), chairman of the Interior-Environment Subcommittee, introduced the approved text as S. 3073 the same day.
The House passed its Interior-Environment appropriations bill 217-199, on July 19 as part of the two-bill minibus package (H.R. 6147) that also included the Financial Services-General Government bill.

PROSPECTS

The Senate is slated to proceed to the House-passed minibus package on July 23. Senate leaders will probably offer the committee-approved Interior-Environment provisions as part of a substitute amendment that includes three other spending measures: Agriculture-FDA, Financial Services, and Transportation-HUD.

The House passed H.R 6147 by a vote of 217-199 on July 19.

Chemical Watch
House Bill Would Cut US EPA Budget By $100M
https://chemicalwatch.com/68906/house-bill-would-cut-us-epa-budget-by-100m
Posted: July 24th, 2018 By: Kelly Franklin

The US House of Representatives has passed an appropriations bill that, if approved, would cut the EPA's funding for 2019 by $100m.

The bill – which passed 217-199, largely along party lines – would set agency funding at $7.96bn. This is $100m lower than the current fiscal year budget. However, it is well above the multi-billion dollar cut proposed by President Trump when he floated a $6.15bn FY2019 budget in February.

The legislation keeps "toxics risk review and prevention" at the existing level of $92.5m.

And it would set aside $113.9m for "chemical safety and sustainability research". This includes maintaining existing funding for the computational toxicology and endocrine disruptor programmes.

A draft report to the bill reaffirms Congressional support for non-animal testing methodologies under TSCA. But it raises the question of "how the agency is implementing the same approach in all of its programmes that involve toxicity testing". It recommends that the EPA submit a report on its non-animal chemical testing work and its efforts to coordinate across federal agencies.

One narrow carve-out in the bill would prohibit appropriated funds from being used to regulate the lead content of ammunition or fishing tackle under TSCA.

And the measure would also block the Agency for Toxic Substances and Disease Registry (ATSDR) – funded at $62m, 17% below current levels – from issuing more than 40 toxicological profiles.

The legislation does not mention the Integrated Risk Information System (IRIS) programme, which has been a subject of contention in recent years and has recently seen a bill introduced to dismantle it entirely.

The Senate has yet to pass its own version of the appropriations bill. Legislation advanced by a subcommittee of the chamber, earlier this year, proposed to maintain the EPA's existing $8.05bn budget for next year.

To avoid a government shutdown, federal spending measures for the coming fiscal year must be agreed by the House and Senate, and signed into law by the president by October.

Politico
Trump Administration 'Concerned' At Extra EPA, Science Funding in Senate Bill
https://subscriber.politicopro.com/energy/whiteboard/2018/07/trump-administration-concerned-at-extra-epa-science-funding-in-senate-bill-1642981
Posted July 24th, 2018 @ 2:24pm By: Eric Wolff and Ben Lefebvre

The White House said today that it is "concerned" that the Senate wants give EPA $8.8 billion for fiscal 2019, $2.7 billion above the Trump administration's request for the agency.

In its Statement of Administration Policy, the White House stopped short of threatening to veto the Senate's next pending "minibus" appropriation bill, H.R. 6147 (115), which will fund EPA, the Interior and Transportation departments, FDA, and other agencies.

The bill "includes funding for programs that are outside of the Agency's core responsibilities," the statement said, pointing to local geographic programs, categorical grants, and the EPA's science and technology account.

The administration approves of water infrastructure funding as well as superfund cleanup.

The White House also criticized the Senate's plans to appropriate $13.1 billion to the Interior Department, a 20 percent increase from what the administration requested.

The administration said it was happy with the money that would go toward Interior's energy development programs and National Park maintenance, but said it was "disappointed" in the continued funding of the Office of Navajo and Hopi Indian Relocation, which the budget proposed closing. The White House also opposes the funding levels Congress proposed for Interior to acquire more land.

The White House was silent on Interior's plans to reorganize its staff and offices. The Senate appropriations bill includes $14.1 million for the plan, which Interior Secretary Ryan Zinke has said is a priority. Interior is mulling whether to move its Bureau of Land Management headquarters from D.C. to a Western state, possibly Colorado, as part of the effort.

Chemical Safety

Bloomberg Environment
EPA Pushes Back Chemical Safety Rollback Amid Data Dispute
https://bnanews.bna.com/environment-and-energy/epa-pushes-back-chemical-safety-rollback-amid-data-dispute
Posted: July 23rd, 2018 @ 12:25pm By: Sam Pearson

Companies will have to wait a little longer for the EPA to finish work on a rollback of chemical facility safety rules after the agency failed to post data justifying the action.

The public will have another 30 days to weigh in on the plan, the EPA said in a notice scheduled for publication in the Federal Register July 24, in response to the lapse.

The decision could set back the administration's timeline to rescind the Obama program and replace it with provisions that industry organizations support. It also comes as litigation, Air Alliance Houston v. EPA, that

challenges the delay of the old regulation is pending at the U.S. Court of Appeals for the District of Columbia Circuit.

The Environmental Protection Agency is working to implement industry-backed changes to tougher chemical plant safety rules the Obama administration developed after a fertilizer plant explosion in West, Texas, killed 15 people in 2013.

The Trump administration wants to eliminate requirements for companies to analyze whether they can run facilities using safer methods, conduct outside audits of operations, investigate chemical incidents, and make more information about facilities' holdings available to the public.

"I think it's one of the old remnants of the Scott Pruitt regime," Yogin Kothari, a senior Washington representative at the Union of Concerned Scientists, told Bloomberg Environment July 23, referencing the agency's former administrator who resigned earlier this month. "The EPA has been doing a lot of sloppy work."

Check EPA's Work

The EPA used data collected under the program from industrial facilities in 2017 to justify its rollback of the safety rules (RIN:2050–AG95), which it released May 30.

The data show chemical holding information reported by companies and how they plan to manage the chemicals under the program. The EPA used the figures to calculate that the changes would save companies more than $80 million annually. Reviewing it would let groups determine whether the figure is accurate.

The agency granted the delay after the nonprofit Earthjustice asked about the missing data in an email to EPA career staff July 9, records show. Eight environmental groups, the United Steelworkers and United Automobile Workers labor unions, and seven states subsequently requested an extra 60 days to review the data.

Finalizing the regulation without posting the data could have left the standard vulnerable to legal challenge. It also provides more time for judges at the D.C. Circuit to weigh in, Bethany Davis Noll, litigation director at the Institute for Policy Integrity at New York University School of Law, told Bloomberg Environment July 23.

The EPA didn't respond to a request for comment by Bloomberg Environment July 23.

Bloomberg Environment
House Bill Decentralizing EPA Chemical Reviews Gets New Chance
https://bnanews.bna.com/environment-and-energy/house-bill-decentralizing-epa-chemical-reviews-gets-new-chance
Posted: July 23rd, 2018 @ 2:13pm By: Sylvia Carignan

Legislation that would distribute the EPA's chemical assessment responsibilities among its offices, instead of leaving them to a single agency program, is getting another chance at a committee markup July 24.

The House Science, Space, & Technology Committee had scheduled a July 18 markup on a bill from Rep. Andy Biggs (R-Ariz.), but Biggs said he heard just before the markup that the House parliamentarian instead assigned it to

the House Energy and Commerce Committee. Biggs then modified the bill to bring it within the science committee's jurisdiction.

The "Improving Science in Chemical Assessments Act" proposes to change the 1978 Environmental Research, Development, and Demonstration Authorization Act, which created the agency's Science Advisory Board, a group of administrator-appointed advisers that review chemical assessments. The bill doesn't make changes to the board itself.

House Democrats and environmental groups have criticized the bill, warning the proposed changes could lead to regulatory disarray.

Distributed Assessments

The agency's chemical assessments are the basis of many EPA decisions regarding standards and regulations in multiple areas from air, water, and chemicals to contaminated sites and their cleanup. The agency's Integrated Risk Information System program currently conducts those assessments. If the bill becomes law, the assessments would be distributed among the agency's individual program offices.

The bill also calls for a chemical hazard identification and dose response steering committee made up of EPA staff and led by the political appointee heading the Office of Research and Development, who hasn't been named. The committee seeks to prevent duplication among the agency's offices, according to the legislation.

The IRIS program has come under fire from House Republicans, including Biggs, and the chemical industry for what they say is a lack of transparency. Last year, the lawmaker introduced, then withdrew, an amendment to a spending bill (H.R.3354) that would have prevented the program from receiving any funding.

Democrats and environmentalists, however, say Biggs' bill would effectively gut the IRIS program and lead to a profusion of disparate chemical standards that would be confusing and less effective.

The National Academy of Sciences reported in April that IRIS is making strides toward greater transparency and accelerating the assessment process. The program is "dramatically more systematic, transparent, and scientifically defensible" than it was in a 2010 National Academies review, the April 11 report said.

The program's internal changes include informing the public how it will assess chemicals and incorporating the most recent scientific research into its decisions.

Bloomberg Environment

Savogran to Offer Paint Remover Line Without Two Spurned Solvents

https://bnanews.bna.com/environment-and-energy/savogran-to-offer-paint-remover-line-without-two-spurned-solvents-1

Posted: July 23rd, 2018 @ 11:17am (updated July 23rd, 2018 @ 12:23pm) By: Pat Rizzuto

The Savogran Co., a consumer goods manufacturer, is introducing a line of paint removers with what it says are less hazardous ingredients after major retailers announced that they won't stock products containing two common solvents.

The five paint and coating removers will be made with acetal, which Mark Monique, president of Savogran, said has a better environmental and toxicological profile, and a bio-based detergent-like chemical called a surfactant, which can act like a solvent. These will replace methylene chloride and n-methylpyrrolidone, dubbed NMP, two solvents commonly found in these types of products, he said.

Lowe's, Sherwin-Williams Co., and Home Depot Product Authority LLC announced that they no longer will carry paint or coating removers containing either solvent by the end of this year.

Savogran released photos of its product line on its website July 23. Those products will be ready for shipping Sept. 1, Monique told Bloomberg Environment.

The Norwood, Mass.-based company will be the first to introduce acetal and the bio-based surfactant to the U.S. market as substitutes for methylene chloride and NMP, he said.

Companies that already sell paint strippers without either of those two solvents typically use chemicals such as benzyl alcohol; dibasic esters; acetone, toluene, and methanol (ATM); and caustic chemicals, according to the Environmental Protection Agency.

Drivers

The retailers' actions follow a campaign urging stores to stop selling both solvents.

The Safer Chemicals Healthy Families, a coalition of environmental, health, and labor organizations, mounted that campaign after the Environmental Protection Agency proposed—during the last days of the Obama administration—to ban the sale of consumer paint removers containing the solvents. The Trump administration placed that proposal on hold.

Then-EPA Administrator Scott Pruitt met in May with some people whose family members died following methylene chloride exposure. He pledged to take some action to ban or restrict the consumer use of methylene chloride, but the agency hasn't done so. Nor has it sent a proposed final rule to a White House office for review, a necessary step before issuing the rule.

At least 17 bathtub finishers who used products containing methylene chloride have died, according to state health departments.

N-methylpyrrolidone could harm babies' development when a pregnant woman is exposed to high concentrations, according to the EPA.

'Dinosaur Chemistries'

"We applaud Savogran for taking this significant step. We hope they will go even further and completely phase out the sale of methylene chloride and NMP-based paint strippers by the end of this year," said Mike Schade, director of Safer Chemicals' Mind the Store campaign.

"Other companies like W.M. Barr should follow suit and bring safer paint strippers to market and phase out these dinosaur chemistries," he said.

W.M. Barr & Co. Inc., which according to its website makes some paint strippers containing both solvents, did not reply to Bloomberg Enviroment's request for comment. The Memphis, Tenn.-based company also makes a line of paint strippers without methylene chloride or NMP.

Technical Challenge

Ridding products of methylene chloride has been "the holy grail of my career since I started with Savogran in 1987," Monique said.

That was just after a 1986 National Toxicology Program study found that laboratory rats and mice exposed to methylene chloride got tumors. The program later classified the solvent as a reasonably anticipated human carcinogen.

Monique wasn't convinced that the animal studies predicted relevant human results, but "the 'rabbit' was out of the hat," and a substitute solvent needed to be found, he said.

Finding substitutes that worked, which were safer and did not have methylene chloride's beneficial attributes—such as being non-flammable, was a challenge, Monique said.

NMP, which once "was billed as a safe alternative," was among the chemicals that Savogran used to replace methylene chloride only to find that it too raised concerns, he said.

Having replaced methylene chloride previously with alternatives later found to pose health risks, Monique was reluctant to predict what future studies could conclude about Savogran's latest solvents.

"I guess the plain answer is anything strong enough to remove paint needs to be properly handled (whether methylene chloride or not) and the instructions on the label must be followed," he said by email.

Monique declined to give a dollar value for the company's research and development effort. Primarily, "It involved my time in the lab which comprises 12 research notebooks," he said.

GMOs

Bloomberg Environment
New GMO Cotton Could Give Farmers Leg Up in Endless Weed Fight
https://bnanews.bna.com/environment-and-energy/new-gmo-cotton-could-give-farmers-leg-up-in-endless-weed-fight
Posted: July 24th, 2018 @ 2:17pm By: Tiffany Stecker

A newly approved cotton seed that resists two different herbicides will help farmers struggling against stubborn weeds, the Agriculture Department announced July 24.

The USDA will deregulate cotton, developed by Bayer CropScience, that is genetically modified to withstand the herbicides glyphosate and p-hydroxyphenylpyruvate dioxygenase (HPPD) inhibitors.

"Farmers are increasingly challenged by threats to their crops like weeds and bugs in their fields and need new tools with multiple modes of action to combat them," Bayer CropScience spokesman Darren Wallis said in a statement.

USDA's Animal and Plant Health Inspection Service determined that the product is "not likely to pose a plant pest risk," a key hurdle to putting it on the market. Cotton farmers are particularly sensitive to weed growth, the agency said in its environmental assessment, because their slow-growing crops are planted early in the season and can't compete with fast-sprouting, aggressive weeds.

HPPD inhibitors work by blocking an enzyme that weeds and other plants need to grow. The most common herbicide in this class, isoxaflutole, is used primarily throughout the Midwest and in northern Texas.

Bayer must now request a label modification from the Environmental Protection Agency, the federal regulator of pesticides, to permit the use of isoxaflutole-based herbicides with the newly deregulated cotton, according to USDA's environmental assessment. The EPA didn't immediately say when it might make a decision on label changes to the pesticide.

More than 500,000 pounds of isoxaflutole, which the EPA considers a probable human carcinogen. were used in 2015, according to the U.S. Geological Survey.

The approval of isoxaflutole-tolerant crops is worrisome to environmentalists such as Bill Freese, a science policy analyst with the Center for Food Safety.

"It doesn't break down very quickly and can get into groundwater," Freese told Bloomberg Environment.

Pesticide companies have developed new and reformulated herbicides to help farmers kill weeds that no longer respond to glyphosate, the main ingredient in Monsanto Co.'s Roundup.

"Repeated use of single herbicides in cotton production over the past several decades has led to the evolution of [herbicide-resistant] weed biotypes that no longer respond to the herbicides that producers previously relied upon," USDA regulators wrote in the assessment.

Bayer and the biotechnology company MS Technologies are marketing a soybean resistant to HPPD inhibitor herbicides, glyphosate, and a third weedkiller called glufosinate.

Grants

Environmental Protection

Two Nevada Agencies Get Water, Radon EPA Grants
https://eponline.com/articles/2018/07/23/nevada-agencies-get-water-radon-epa-grants.aspx
Posted: July 23rd, 2018

EPA has awarded a total of $330,000 to the Nevada Division of Public and Behavioral Health and to the Nevada Division of Environmental Protection to strengthen their capacity to protect human health and the environment.

NDPBH will receive a $230,000 State Indoor Radon Grant to support radon exposure prevention and outreach. They will work with the University of Nevada Cooperative Extension to provide a variety of radon-related services

to Nevada citizens. The program provides radon measurement and mitigation advice to homeowners, public outreach and innovative informational activities, radon testing during real estate transactions, and promotes the building of new structures with radon-resistant features.

NDEP will receive a $100,000 Clean Water Act grant to continue the state's water quality management and planning program to improve impaired waters and protect unimpaired waters across the state. One focus area for the program is development of appropriate and consistent temperature and dissolved oxygen criteria to protect the various coldwater and warmwater fish found in Nevada waters. NDEP will also sub-grant $40,000 of the funds to the Clark County Board of Commissioners, the designated CWA planning agency for Clark County, to promote efficient and comprehensive programs for controlling water pollution.

"EPA is pleased to work with our Nevada partners to advance their environmental and public health goals," said EPA Pacific Southwest Regional Administrator Mike Stoker. "These grants will help citizens avoid exposures to radon and assist the state in protecting its critical water resources."

"This grant award allows DPBH to continue public information and outreach activities to educate the public and encourage testing for, mitigation, and prevention of exposure to radioactive radon, the leading cause of lung cancer among non-smokers," said NDPBH Chief Karen Beckley.

Policy Chief

E&E News
Ex-Inhofe Aide Picked to Lead Policy Shop
https://www.eenews.net/climatewire/stories/1060090145/search?keyword=EPA
Posted: July 24th, 2018 By: Kevin Bogardus, E&E News reporter

EPA has a new policy chief.

Brittany Bolen, who has been acting as the leader of EPA's policy office since April, will lead the shop on a permanent basis, the agency's chief of staff, Ryan Jackson, said in an internal email obtained by E&E News.

Bolen joined EPA last year as the Office of Policy's political deputy. She was previously policy counsel for the Senate Republican Policy Committee, and before that, majority counsel on the Senate Environment and Public Works Committee under then-Chairman Jim Inhofe (R-Okla.).

Several other former Inhofe aides have taken on prominent positions at EPA under the Trump administration, including Jackson, the senator's former chief of staff, and acting EPA Administrator Andrew Wheeler, who was EPW staff director under Inhofe.

Samantha Dravis, the prior EPA policy chief, stepped down from the agency in April. She was considered a close aide to Administrator Scott Pruitt, who resigned earlier this month after being overwhelmed with allegations of excessive spending and mismanagement.

"During her time at EPA, Brittany has played a critical role in leading OP, particularly as the office went through a major reorganization this last spring. Additionally, Brittany serves on EPA's Regulatory Reform Task Force and has

testified before Congress on the agency's regulatory reform efforts," Jackson told EPA employees yesterday evening in his email.

"Please join me in congratulating Brittany on her selection for this role."

Brian Mannix, who led EPA's policy shop during the George W. Bush administration, noted that Bolen has been working in the key agency office for more than a year.

"The policy chief has to engage with all of the staff as well as the program offices to give the administrator the full range of options," said Mannix, now a research professor at George Washington University.

"My impression is that Brittany has been engaging with the staff and is fully prepared to step in the [assistant administrator] role."

Bolen earned her law degree from the George Mason University School of Law and a bachelor's degree from the University of Florida.

Bryan Zumwalt, then chief counsel at EPW, brought Bolen onto the committee staff in 2013. He called her "one of the best hires" he made at the panel.

"She is very capable, very talented, and EPA is fortunate to have her in that position," said Zumwalt, now vice president of federal affairs at the American Chemistry Council.

Pebble Mine

E&E News
Foes in Pebble Mine War Scrutinize Wheeler's Ties to Project
https://www.eenews.net/greenwire/2018/07/24/stories/1060090195
Posted: July 24th, 2018 By: Dylan Brown, E&E News reporter

New EPA chief Andrew Wheeler inherited a stain on his predecessor's otherwise sterling conservative reputation, but his ability to remove it depends on his relationship to the company behind the controversial Pebble mine.

Former EPA Administrator Scott Pruitt shocked his staunchest supporters earlier this year when he reneged on his own attempt to scrap proposed restrictions on a mining project that has divided Alaska for a more than a decade.

The devout deregulator preserved planned restrictions that allies in the mining industry and on Capitol Hill condemned as one of the worst examples of the Obama-era overreach Pruitt was supposed to eradicate.

"It really is mysterious," said Myron Ebell, who led President Trump's EPA transition team. "It sticks out like a sore thumb."

Now that Pruitt is out and Wheeler is in at the agency, questions have emerged about the former mining lobbyist's ties to Pebble LP.

The firm, a subsidiary of Canadian firm Northern Dynasty Minerals Ltd., pushed for a meeting with Pruitt before he even took office.

A day before Pruitt's Feb. 17, 2017, confirmation, EPA official David Schnare gave Pebble in-house lobbyist Peter Robertson a "homework assignment": prepare a briefing for Pruitt making the case for eliminating the agency action that had stymied the project (Greenwire, June 8).

In 2014, EPA issued a proposed determination to restrict large-scale mining in the Bristol Bay watershed, the world's largest sockeye salmon fishery, under Section 404(c) of the Clean Water Act.

The power to veto or limit Army Corps of Engineers dredge-and-fill permits for industrial activity like mining has been used 13 times in agency history. Pebble LP quickly sued.

Schnare resigned in March 2017, but Pebble got their meeting with Pruitt thanks to Faegre Baker Daniels LLP, the K Street firm where Wheeler was a lobbyist at the time.

'Would be happy to'

Emails, released after a Freedom of Information Act (FOIA) lawsuit by the Sierra Club and other groups, show Faegre Baker Daniels Director Darrin Munoz reached out to EPA on April 21, 2017 (Greenwire, March 16).

"I represent the Pebble Mine in Alaska," wrote Munoz, who worked directly with Wheeler, lobbying on behalf of coal mining company Murray Energy Corp., uranium miner Energy Fuels Resources Inc. and Sargento Foods Inc.

"The CEO Tom Collier will be in DC from Alaska next week and would appreciate the opportunity to meet with the Administrator if he is available, or his Chief of Staff Mr. [Ryan] Jackson," Munoz wrote. "He will be here on Friday April 28th and Monday May 1st if either of those dates would work."

Jackson quickly responded: "Would be happy to. What times work?"

Aides for Pruitt and Faegre Baker Daniels subsequently set up a meeting for May 1, 2017, at 9:15 a.m.

Pruitt's schedule, obtained by E&E News via FOIA, shows that the administrator, Jackson and other EPA staffers met with Collier and Munoz.

The meeting proved enormously consequential for Pebble.

Within an hour, EPA acting General Counsel Kevin Minoli notified staff that Pruitt had "directed" the agency to withdraw the 2014 proposed determination, according to emails first obtained by CNN.

Within two weeks, EPA and Pebble had settled their legal disputes (E&E News PM, May 12, 2017). And in July 2017, EPA started the process to withdraw the proposed determination.

The way forward clear, Pebble subsequently submitted a mining application.

Course change

But in January, Pruitt stunned Pebble and mine opponents alike by calling off the withdrawal of the proposed determination, stating "any mining projects in the region likely pose a risk to the abundant natural resources that exist there."

Pebble was able to continue the permitting process, a point Pruitt and his defenders stressed, but outraged conservatives like Ebell, a Competitive Enterprise Institute senior fellow, openly criticized the former administrator, who generally had their unwavering support (Greenwire, April 20).

Pruitt's resignation, Ebell said, presents a fresh chance to scrap the "fatally flawed" 2014 restrictions.

"It seems to me that they can take a fresh look at it, but whether they will is another issue and I don't have an answer to that," Ebell said.

One reason, he said, is questions about Wheeler recusing himself from matters involving Pebble after the work done by his former firm.

"We will have another go, but we have to figure out who to talk to first," Ebell said.

Recusal?

Wheeler will not be recusing himself on any matter involving Pebble LP or the Pebble mine project, EPA has already said.

"Mr. Wheeler understands his obligations under federal ethics laws and the Trump Ethics Pledge that he signed," an EPA spokesman said in an email. "On May 24, 2018, he issued a recusal statement that detailed his obligations concerning lobbying clients in the past two years."

Murray Energy and Energy Fuels were among the former clients listed on Wheeler's recusal statement, but Pebble was not.

An EPA spokesman said Wheeler was never a lobbyist for Pebble and that Faegre Baker Daniels has not lobbied EPA on behalf of Pebble since Wheeler joined the agency on April 12.

According to the federal lobbying database, Faegre Baker Daniels never registered as a lobbyist for Pebble and the mining company did not report any lobbying done by Wheeler's former firm.

Pebble LP declined to comment on the nature of their relationship with Faegre Baker Daniels. In an email, Faegre Baker Daniels spokeswoman Marylee Moore said: "Per our firm's policy, we do not comment on client work."

Wheeler was not sent or mentioned in any of the recently disclosed emails, but Natural Resources Defense Council's Western director, Joel Reynolds, said his ties to the lobby firm set "compelling grounds for recusal."

"He's too close to the Pebble company on a hotly contested matter that requires attention to even the appearance of a conflict," Reynolds said, "and I think we certainly as a minimum have that here."

The broad language of Wheeler's recusal statement has raised potential questions about the degree to which he must refrain from work related to Faegre Baker Daniels.

"I understand that I am prohibited from participating in any particular matter involving specific parties in which my former employer, Faegre Baker Daniels LLP, or any former client to whom I provided legal or consultative services during the past two years is a party or represents a party," Wheeler wrote.

Ethics rules would require Wheeler to recuse himself if he profited in any way from Faegre's work on behalf of Pebble, but in a letter last year to EPA's Minoli, then designated as the agency's ethics official, Wheeler said he was a "non-equity principal" at the firm.

"It reduces the likelihood of a direct conflict, but his former partners in the firm ... were involved in this and he was a principal," said Virginia Canter, chief ethics counsel for watchdog Citizens for Responsibility and Ethics in Washington (CREW).

A former ethics attorney for the International Monetary Fund, Presidents Obama and Clinton, and the Securities and Exchange Commission, Canter said if EPA must rely on such a technical reading of federal ethics law, it seems easier for Wheeler just to steer clear of the matter.

"There are a lot of reasons why there is a heightened sense of a conflict of interest here," Canter said. "It doesn't seem like an exercise in good judgment to be jumping into this matter given his former position."

Wheeler should have no part in determining the fate of Pebble for some opponents that believe the mine poses a fundamental threat to salmon in Bristol Bay.

"What the federal ethics nuance is here or not," said Lindsey Bloom, an advocate with the group Commercial Fishermen for Bristol Bay, "it's pretty black and white for us."

Power Plant Cooling

Bloomberg Environment
Power Plant Cooling Regulations Upheld in Appeals Court
https://bnanews.bna.com/environment-and-energy/power-plant-cooling-regulations-upheld-in-appeals-court-1
Posted: July 23rd, 2018 @ 10:38am (updated July 23rd, 2018 @ 4:16pm) By: David Schultz

An EPA rule regulating the water that power plants and other industrial facilities take in to cool their machinery was upheld unanimously by a panel of three appeals court judges.

The U.S. Court of Appeals for the Second Circuit refused the requests of both industry groups and environmentalists to overturn the 2014 regulation, which prohibited the granting of a permit for a cooling water intake without first consulting with the U.S. Fish and Wildlife Service and the National Oceanic and Atmospheric Administration to look at how the intake could affect endangered species.

The panel decision was a victory for the Environmental Protection Agency and other federal agencies, which have been struggling for decades to establish regulations for cooling water intake systems that can survive in court.

The documents the agencies relied on to justify the rule "are based on reasonable interpretations" of water pollution law and are "sufficiently supported by the factual record," Judge Raymond J. Lohier Jr. wrote in his July 23 opinion.

There are more than 500 power plants and more than 500 additional facilities nationwide that are required to get permits to intake water from lakes and rivers for cooling purposes. The EPA estimated that the costs to businesses to implement the most controversial part of the rule would total up to $475 million per year, a figure that industry groups said would actually be much higher.

Meanwhile, environmental groups opposed the rule because they said it gives state and regional officials too much authority to determine whether a facility has installed water intake technology that minimizes the killing of fish and other animals.

Although the court ruled against both the environmental and the industry groups by keeping the rule in place, Russell Frye, who represented a coalition of smaller companies, said the opinion is a victory for some power plants and other businesses. Frye, the principal at the firm Frye Law PLLC in Washington, said the court's ruling makes it clear that this rule doesn't apply to smaller facilities that draw in less than 2 million gallons of water per day.

Other attorneys for both industry groups as well as the environmental groups either declined to comment for this story or didn't respond to Bloomberg Environment.

In addition to Lohier, the panel consisted of Judges Dennis Jacobs and Jose A. Cabranes.

The case is Cooling Water Intake Structure Coal. v. EPA, 2d Cir., No. 14-4645, 7/23/18.

E&E News
Court Backs Hot-Button Obama Power Plant Rule
https://www.eenews.net/stories/1060090073
Posted: July 23rd, 2018 By: Amanda Reilly, E&E News reporter

In a resounding win for EPA, a federal court today upheld a contentious Obama-era rule aimed at protecting fish and other aquatic life endangered by water intakes of power plants and other industrial facilities.

The three-judge panel of the 2nd U.S. Circuit Court of Appeals rejected arguments by both environmentalists and industry groups, finding that the rule and an associated species study were based on "reasonable interpretations of the applicable statutes and sufficiently supported by the factual record."

The 2nd Circuit also found EPA followed proper rulemaking procedures. Judge Raymond Lohier wrote the 74-page opinion for the court.

The lawsuit was seen as part of a trend of environmental groups wielding the Endangered Species Act to undo EPA rules they consider weak. The law requires agencies to consult with the Fish and Wildlife Service and NOAA Fisheries to ensure federal actions don't harm listed species (Greenwire, June 26, 2015).

The lawsuit's target: an EPA rule finalized in 2014 in response to court action establishing requirements for cooling water intake structures at existing power plants and manufacturing facilities. The rule was meant to reduce the

number of aquatic organisms that get sucked into cooling water intakes and killed by being pinned against screens — called "impingement" — or exposed to extremely hot water — called "entrainment."

The standards applied to facilities that use structures to withdraw more than 2 million gallons of water per day, of which a quarter is used for cooling. They covered 99.8 percent of total water withdrawals by U.S. industrial sources (Greenwire, Aug. 15, 2014).

EPA faced criticism from all sides. Industry groups and their Republican allies said it would shut down power plants and other facilities, while greens said it would do little to protect the billions of organisms that get killed by impingement and entrainment each year.

The result was a massive lawsuit, which was consolidated in the 2nd Circuit. The three-judge panel heard arguments in September.

A large coalition of environmental groups had challenged both the rule itself and a 2014 biological opinion that concluded it was not likely to jeopardize the continued existence of listed species or adversely modify critical habitat. FWS and NOAA Fisheries issued the opinion based on formal consultation with EPA under the Endangered Species Act.

Greens were particularly angry with EPA's decision not to set a single, national entrainment standard based on a closed-cycle cooling system. Instead, the agency allowed for local permitting agencies to make site-specific technology decisions.

Lohier, an Obama appointee, wrote that the agency's approach was reasonable and that EPA's explanation of why closed-cycle cooling was not nationally available — the agency said in part that 25 percent of facilities have land constraints that prevent them from retrofitting — was adequate.

"Here, the EPA found that a 'one-size-fits-all' approach to entrainment was infeasible," Lohier wrote. "In light of this finding and our precedent, we conclude that the EPA acted both reasonably and within its authority in adopting a case-by-case approach to entrainment standards."

Similarly, the judge upheld EPA's decision to not require closed-cycle cooling to reduce impingement, when occurs when species are killed against screens. Instead, the agency said that "modified traveling screens with a fish-friendly fish return" rate constituted best technology.

EPA also correctly excluded "fragile species" from its mortality calculations, Lohier wrote. The court agreed with EPA that the mortality of those species depends largely on natural conditions — not technology performance — and that including them would have made it impossible to identify technology to minimize impingement.

As for the Endangered Species Act consultation process, environmentalists had argued that the wildlife agencies failed to use the best scientific and commercial data available and wrongly concluded that the rule was unlikely to harm listed species. The groups also took aim at the rule's requirement that local permitting agencies review facilities' impacts on listed species.

But Lohier wrote that EPA had created an adequate process to avoid jeopardy to species and that FWS and NOAA Fisheries would have meaningful opportunities to review specific permit applications and make recommendations about species impacts.

"We reject each of these arguments, most of which are really challenges to the services' 'programmatic' approach to the biological opinion," the court opinion says.

Industry challenges

The 2nd Circuit likewise rejected all of industry's arguments, about both the substance of the rule and EPA's rulemaking procedures.

Significantly, the court upheld the role that the rule created for wildlife agencies in advising on site-specific environmental impacts. Industry had argued that EPA had no authority to give the agencies a say in future permitting decisions.

"That broad claim has no basis in the statutory language or, for that matter, our case law," Lohier wrote.

The court concluded that the rule reflects the "cooperative arrangement specified by Congress in the ESA." Lohier noted that permitting agencies and EPA retain final say in establishing requirements for specific facilities.

"Nothing in the rule," he said, "suggests that the EPA will 'rubber-stamp' the services' conclusions."

The court also rejected industry's contention that EPA spurned the Administrative Procedure Act by not allowing the public to comment on its biological evaluation or the services' biological opinion.

Lohier wrote the public is not "entitled to comment" on formal Endangered Species Act consultations.

"So no procedural infirmity arises in failing to provide notice of or an opportunity to comment on the biological opinion or other determinations by the Services," the judge wrote.

Superfund Clean Ups

Bklyner
EPA Marks Final Phase of Gowanus Canal Dredging Pilot
https://bklyner.com/epa-marks-final-phase-of-gowanus-canal-dredging-pilot/
Posted: July 23rd, 2018 By: Pamala Wong

GOWANUS – During Monday morning's intermittent rain, EPA Regional Administrator Peter Lopez, Assembly Member Jo Anne Simon, and Dan Wiley from Congress Member Nydia Velázquez's office marked the final phase of the dredging and capping pilot project at the Gowanus Canal's 4th Street Turning Basin.

"We're in the midst of working on our pilot project which is intended to illustrate and test out the methodology for mitigation, to practice some of the methods that we're using for bank stabilization, and for moving the progress further," Lopez said while crews poured capping materials into the bottom of the 4th Street Basin behind him. "The capping is what's underway right now, as you see. We're laying down the liner," he explained.

The 4th Street Turning Basin pilot project has included installing steel sheet piles along the banks of the canal to allow for safe dredging, removing approximately 11 feet of sediment from the bottom of the Canal and transporting it to an off-site treatment facility. Currently in its final phase, approximately two feet of sand, clay, and "activated carbon-absorbing materials" are being laid down at the bottom of the turning basin to "create a clean canal bottom."

"Tremendous progress has been made at this site, and what we are learning here will be applied to the overall cleanup of the Gowanus Canal," said Lopez. "This pilot project is serving its purpose—to show us what works best and what may not work as well under real-world conditions as we move toward full-scale cleanup of this highly-contaminated canal."

Approximately 17,000 cubic yards of contaminated sediment have been dredged from the Gowanus Canal's 4th Street turning basin so far. The project will help the EPA determine the overall engineering design for the dredging and capping of the entire Canal.

The EPA's final cleanup plan for the Gowanus Canal Superfund site includes:

- Removing contaminated sediment from the bottom of the canal via dredging
- Capping the dredged areas using various capping techniques
- Working with the City of New York to prevent CSO discharges or street runoff from compromising the cleanup
- Excavating and restoring approximately 475 feet of the 1st Street Basin and 25 feet of the 5th Street Basin
- Treating the dredged contaminated sediment at an off-site facility

More than 300,000 cubic yards of highly contaminated sediment is expected to be dredged from the upper and middle portions of the Canal (the upper part runs from the top of the Canal down to 3rd Street while the middle runs from 3rd Street to just south of the Hamilton Avenue Bridge). Another 281,000 cubic yards of contaminated sediment is expected to be pulled out of the lower portion of the Canal (from Hamilton Avenue Bridge down to the mouth of the Canal).

Currently expected to be completed in the fall, the 4th Street pilot study began in October 2017 but ran into delays earlier this year when heavy machinery installing steel sheets to reinforce the crumbling bulkheads along the canal began disrupting some of the surrounding land and nearby buildings. An area of stones on the Whole Foods promenade, where Monday's press event was held, buckled from vibrations caused by the work, prompting the closure of that section of the promenade to the public.

"Our goal has been to stabilize these banks, that's what these sheet metal pilings are for, drive them down a significant depth to make sure that as we do the dredging that the banks retain their integrity and can be developed," Lopez explained. "Some of the soft material that you see here settled, the material was relatively new. As we were driving the sheet piling in, things were moving, some of the material here moved. The method for driving [the pilings] was causing quite a bit of vibration, so we had to step back and assess how we can do that differently."

"That started shortly after the piling driving started which was in the earlier part of this year," Walter Mugdan, EPA Superfund Regional Administrator for Region 2, further explained following the press conference. "Normally pilings are driven by pounding them in, or vibrating them in, and both of those techniques turned out to be unacceptable in this particular location."

"There was a little bit of cracking occuring in one of the buildings across the [Canal], also from the vibrations, so we ended up directing the company that's doing the work, to use a different technique which hydraulically presses the pile down into the ground, so rather than pounding it or vibrating it, it simply presses it, and that has the least amount of impact to the surrounding area," Mugdan added.

"I wouldn't say it's dangerous, but we don't want people walking there," Lopez said of the damaged portion of the walkway. "The main structures as we understand are solid, it's just the soft material in between. The building foundation and the concrete wall, [those are] not moving, but there was soft material in between that settled."

"Once [the pilot] is done, the parties who are part of the process will help restore [the promenade]," Lopez added. "We have an agreement with Whole Foods, to come back and help restore their property and return it to its previous condition." Among the Primary Responsible Parties [PRPs], National Grid is the lead responsible party that is contracting and overseeing the work at the pilot site, according to Mugdan.

The pile driving along other areas of the canal will be done "site by site," Mugdan said. "We now have a variety of techniques and we know that this pressing technique is available—it requires specialized equipment—but it's available to us if and when it's necessary."

Selecting which type of capping material will be used will also be determined "site by site" as the cleanup progresses along the Canal. An "amended cap" was being laid down into the pilot site throughout Monday's press event. "It has additional carbon-rich material in it beyond sand, so it not only provides a physical barrier between the contaminated sediment below and what's above, it also creates a barrier that will capture chemicals as they come up," Mugdan explained.

"There are a variety of [capping] techniques that we piloted and different techniques will be used in different parts of the canal depending on the level of contamination," he continued. The head of the canal, the area opposite Public Place, and the area opposite Lowe's have experienced the heaviest contamination because each location formerly housed a manufactured gas plant, according to Mugdan. "Those are areas of heavier contamination. With the coal tar material, contamination goes down as much as 100 feet, it can't all be dug out, so those are the areas where we'll get rid of the soft gooey stuff, the 'black mayonnaise.' The harder sediment below that's still contaminated will get solidified with this process of adding cement in place, in situ, and it [will] become like a sheet of concrete."

"There are many things that make the canal unique," Mugdan explained. "It's so narrow, it's right in this extremely dense urban area, there are these low bridges they have to work around. There are a lot of things that make this an engineering challenge and a logistics challenge. These turning basins have provided a useful locale for doing these pilots, then we eventually get out into the main stem of the canal and we have some better background as to what we're doing."

Dan Wiley, District Office Director for Congress Member Nydia Velázquez, reminded those in attendance at the press event that a North Gowanus Public Visioning Session will take place Wednesday evening. "Not only do we

have the cleanup, we also have to make sure that we preserve the community and we're able to get the best deal for the locality," Wiley said.

Council Member Stephen Levin represents the northern section of Gowanus. His office coordinated Wednesday's meeting, and while the Council Member was not at the press conference, a representative of his, Ben Solotaire said, "We're committed to the cleanup of the canal, we've been working with our elected partners in the community. We want to guarantee that the open space at the canal where the CSO tank facility is going to go and the other spaces are designed and being constructed with the community in mind and with the input of the community. As this process moves forward we look forward to working together with everybody and making it successful."

The 4th Street Turning Basin pilot project is scheduled to be completed in the fall. The "full-scale dredging of the remainder of the Canal" is scheduled to begin in 2020. The estimated cost of the Superfund cleanup project is $506 million.

Today's press event coincided with the one-year anniversary of the release of the EPA's Superfund Task Force Report. The Superfund Task Force was established to provide recommendations for improving the Superfund program. Learn more about the Superfund Task Force at epa.gov.

Bloomberg Environment

More Incentives for Faster Superfund Cleanups in EPA Game Plan
https://bnanews.bna.com/environment-and-energy/more-incentives-for-faster-superfund-cleanups-in-epa-game-plan-1
Posted: July 23rd, 2018 @ 2:31pm (updated July 23rd, 2018 @ 4:20pm) By: Sylvia Carignan

Companies involved with contaminated properties will see more incentives to negotiate quicker deals for faster cleanups over the next year as part of the EPA's continued emphasis on addressing Superfund sites.

The program was a priority of former Environmental Protection Agency Administrator Scott Pruitt, but his task force has completed less than a third of its Superfund program reforms in the past year. Acting Administrator Andrew Wheeler has said that priority will continue.

The EPA's Superfund task force drafted more than 40 recommendations in July 2017 on how to improve the contaminated site cleanup program. The agency anticipates completing 27 percent of those recommendations by the end of July, and the remaining 73 percent over the next 13 months, according to a July 23 EPA report.

The agency plans to make progress on redevelopment by providing companies the incentive of reduced oversight at Superfund sites, revising guidance for third parties who want to get involved at contaminated sites, and providing more clarity about companies' cleanup responsibilities.

The Superfund task force has consistently emphasized cleanup speed, John Gullace, partner at Manko, Gold, Katcher & Fox LLP in Bala Cynwyd, Pa., told Bloomberg Environment. Gullace has represented companies involved with Superfund sites.

"It appears that EPA is still looking at ways to accomplish this goal, which could include quicker reviews by EPA, but [potentially responsible parties] should expect EPA to move [potentially responsible party]-lead cleanups along more quickly," he said in an email.

Defining Goals

Some of the agency's completed recommendations are still a work in progress, said Katherine Probst, who works on Superfund issues as an independent consultant with Kate Probst Consulting near Washington, D.C. The agency marks the administrator's list of priority Superfund sites as a completed recommendation, although sites continue to be added and deleted from the list.

The remaining, incomplete recommendations range from building relationships with federal agencies to developing templates for letters the agency sends to companies.

"All these recommendations are not equal in terms of the import and impact to the program," she told Bloomberg Environment.

Over the next year, the EPA also will emphasize the "adaptive management" approach to Superfund sites, where the agency's regional offices are encouraged to take early cleanup actions at sites with immediate risks or the potential for a contaminant to spread. The approach could make cleanup cheaper and quicker, but also could create uncertainty for companies responsible for cleanup, sources previously told Bloomberg Environment.