Message

**From:** Dalrymple, Anne [Dalrymple.Anne@epa.gov]
**Sent:** 11/10/2020 3:35:52 PM
**To:** Lindsay, Nancy [Lindsay.Nancy@epa.gov]
**Subject:** FW: Incoming Media & Congressional Inquiries & Selected News Clips for 11/9/2020

**SECTION 5: SENIOR RESOURCES OFFICIAL**

SRO Comments:

SRO Decision:
Approved

Lindsay, Nancy 9/16/2020 6:03:13 PM
GS 7/9 recruitment appropriate for a pathways grants project officer. Peace Corp also acceptable. GS11 pathways requires PhD which isn't needed for a generalist position.

So you don't have to look it up -- you had then go down a grade for recruitment.

**SECTION 2: ASSOCIATE DIRECTORS**

AD Comments:

Brought to Associates Meeting on 9/2. Associates concurred with no comment. There was a question about whether this hire should start a GS-7 or GS-9. Peter confirmed we can start at a GS-9 targeting Master's degree graduates.

AD Recommendation*:
Concur

**From:** Sullivan, Peter <Sullivan.Peter@epa.gov>
**Sent:** Tuesday, November 10, 2020 7:33 AM
**To:** Lindsay, Nancy <Lindsay.Nancy@epa.gov>; Dalrymple, Anne <Dalrymple.Anne@epa.gov>
**Subject:** RE: Incoming Media & Congressional Inquiries & Selected News Clips for 11/9/2020

https://usepa.sharepoint.com/sites/R10/OMP/HR/Lists/PPF/Item/displayifs.aspx?List=515fe8c7%2Da0eb%2D4335%2D996e%2Deee15c4c0f07&ID=178&Source=https%3A%2F%2Fusepa%2Esharepoint%2Ecom%2Fsites%2FR10%2FOMP%2FHR%2FLists%2FPPF%2FPeters%2520View%2Easpx&ContentTypeId=0x01000F031398F82A2E4EB73E03C91E7823D6

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|---|---|---|---|---|---|---|
| TRIBAL TRUST & ASSISTANCE BRANCH | Vacancy Open | 212172 | 20 2044433 | ENVIRONMENTAL PROTECTION SPECIALIST | CI-R10-OT-2021-0004 | 07 |

Peter Sullivan
Human Capital Officer
Human Resources and Facilities Branch
Mission Support Division
EPA Region 10
1200 6th Avenue, Suite 155 21-C08
Seattle, WA 98101
(206) 553-2901 (office)
(425) 295-5636 (cell)

**From:** Lindsay, Nancy <Lindsay.Nancy@epa.gov>
**Sent:** Monday, November 9, 2020 5:59 PM
**To:** Sullivan, Peter <Sullivan.Peter@epa.gov>; Dalrymple, Anne <Dalrymple.Anne@epa.gov>
**Subject:** FW: Incoming Media & Congressional Inquiries & Selected News Clips for 11/9/2020

I don't recall seeing a ppf for another tribal coordinator…

Nancy Lindsay
Region 10 Senior Resource Official
Director, Mission Support Division
1200 Sixth Ave, Suite 155
Seattle, WA 98101
(206) 553-0275
She/her/hers

*Region 10 strives to be a fragrance-free workplace. In an effort to improve indoor air quality for our colleagues, please refrain from using perfume, cologne, essential oils, scented after-shave, lotion and other fragrant personal care products. Thank you.*

**From:** Skadowski, Suzanne <Skadowski.Suzanne@epa.gov>
**Sent:** Monday, November 9, 2020 5:43 PM
**To:** Hladick, Christopher <hladick.christopher@epa.gov>; Pirzadeh, Michelle <Pirzadeh.Michelle@epa.gov>
**Cc:** R10 Press Team <R10_Press_Team@epa.gov>; Kowalski, Edward <Kowalski.Edward@epa.gov>; Opalski, Dan <Opalski.Dan@epa.gov>; Terada, Calvin <Terada.Calvin@epa.gov>; Lindsay, Nancy <Lindsay.Nancy@epa.gov>; Fordham, Tami <Fordham.Tami@epa.gov>; Edmondson, Lucy <Edmondson.Lucy@epa.gov>; Barber, Anthony <Barber.Anthony@epa.gov>; Hamlin, Tim <Hamlin.Tim@epa.gov>; Wilson, Wenona <Wilson.Wenona@epa.gov>; Baca, Andrew <Baca.Andrew@epa.gov>; Anderson-Carnahan, Linda <Anderson-Carnahan.Linda@epa.gov>; Viswanathan, Krishna <Viswanathan.Krishna@epa.gov>; UG_R10-PAO <UG_R10-PAO@epa.gov>; Li, Beverly <Li.Beverly@epa.gov>
**Subject:** Incoming Media & Congressional Inquiries & Selected News Clips for 11/9/2020

**Incoming Media & Congressional Inquiries & Selected News Clips for 11/9/2020**

**CONGRESSIONAL /INTERNATIONAL/LOCAL GOVERNMENT CONTACTS/INQUIRIES**

- Today a new community liaison for WA Congresswoman Suzan DelBene requested an introductory call, including the topic of the Bobby Wolford Trucking & Salvage settlement, and we expect to have that call later this week.

**REGIONAL NEWS CLIPS**

- Seattle Times: A dam blocking 348 miles of salmon streams hasn't generated electricity since 1958. But who will take it down?
- Seattle P-I: Washington state forest plan deems watershed as a priority
- Seattle P-I: Washington state tribes, utility consider old dam's removal

**Oregon Wildfires Response**

- Mail Tribune: Don't wait to sign EPA permission form for wildfire cleanup>

**NEWS RELEASES/STATEMENTS/AMPLIFICATIONS/OTHER**

- None

**MEDIA INQUIRIES**

- None

**R10 SOCIAL MEDIA (Our posts)**

- Twitter / Facebook @EPAnorthwest: EPA 2020 Oregon Wildfires Recovery: Watershed Protection: https://youtu.be/y_tVmc8nGa0 As part of the #OregonFires2020 Response and Recovery, EPA crews are now implementing emergency mitigation efforts to prevent hazardous ash and other household hazardous wastes from entering into several waterways in fire-affected counties. These efforts are aimed at protecting water quality and sensitive riparian habitats by stemming the flow of wildfire debris and hazardous waste into streams and rivers in the state. This work involves removing hazardous debris from streambanks, and placing straw wattles, bulk straw, and jute netting along those banks to slow the movement of ash and other harmful debris into the water.

- Twitter / Facebook @EPAnorthwest: Congrats to our friends and partners @ColumbiaEstuary & Columbia Gorge Refuge Stewards on the amazing progress at the #SteigerwaldReconnectionProject in the Lower #ColumbiaRiver. See the 20/20 Blog for before & after pics! https://refuge2020.info

- Twitter / Facebook @EPAnorthwest: Come work with us! EPA Region 10 is hiring a Tribal Coordinator to work in our Seattle or Anchorage office. This position is open to recent graduates and is a one-year developmental program that may lead to a term or permanent job. Please apply by Nov. 12 at: https://www.usajobs.gov/GetJob/ViewDetails/583856900

**OTHERS NOTABLE POSTS/RELEASES/STATEMENTS**

- None

# # # # #

**HQ CLIPS**

## Administration

Environmental Law and Policy in the Biden Administration

**Agency**

Potential Picks for EPA and USTR

**Agriculture**

Two Ag Groups File Suit Against EPA Over Dicamba Registration

**Air**

Drop in pandemic CO2 emissions previews world of electric vehicles

**Chemicals**

EPA, States Clash Over Pesticides

**Covid-19**

Inspirotec and Mobile Care Chicago Partner to Provide Free Virtual Home Environment Assessments for Children With Asthma Amid COVID-19 Pandemic

U.S. EPA settles with New York's Quest USA Corp. for importing unregistered disinfectant product into Los Angeles

**Energy**

EPA Asks SCOTUS for Delay in RFS Case

**Superfund**

2 Jacksonville City Council Members Evaluating Options For Former Fairfax Superfund Site

**Water**

Mining industry, Montana GOP oppose selenium limit for Kootenai River, Lake Koocanusa

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## Administration

Environmental Law and Policy in the Biden Administration

https://www.natlawreview.com/article/key-environmental-law-and-policy-issues-to-watch-biden-administration

Monday, November 9, 2020

On November 7, Joe Biden was projected to become President-elect. This news alert provides a high-level review of issues to watch and changes to expect in a Biden administration. Although the makeup of the Senate is not yet entirely clear, it seems that there will not be a change in Senate leadership and that the House will remain under Democratic control. The ultimate fate of the Senate majority will be decided on January 5, 2021 with the runoff of the two Georgia Senate Seats. For the Democrats to become the majority, they would need to prevail in both Senate races.

The next few years will see significant shifts in U.S. environmental and natural resource law and policy, as well as changes in political and perhaps some career personnel at the U.S. Environmental Protection Agency (EPA) and other federal agencies that establish and implement U.S. environmental regulation. The next six months look to be especially consequential, as the Trump administration seeks to finalize certain ongoing efforts while the new Biden administration identifies and implements early priorities. Although some form of the stimulus bill may get bipartisan support, and Congress must yet fund the government through the appropriations process,

we do not expect any major environmental legislation during the remainder of the Trump administration. The Trump administration, however, still has complete Executive Branch authority and can still issue new rules, pursue enforcement actions, and promulgate significant rules. Similarly, without control of the Senate, a Biden Administration will be unlikely to pass significant environmental legislation, particularly a climate bill, but will be able to direct policy through the Executive Branch.

As events unfold, we will provide updates. Please contact the authors, your usual B&D attorney, or any member of our Election Analysis Task Force (including several former senior EPA and U.S. Department of Justice (DOJ) officials) for more information.

**Key Takeaways**

The Regulated Community should consider taking the following actions in the short term:

Administrative litigation and rulemakings. Know where you stand with respect to ongoing litigation (which may be stayed in the early days of a new administration) and pending rulemakings, as well as recently-promulgated rulemakings or Executive Orders that may be subject to full or partial reversal.

Climate, environmental justice, clean energy, and vehicles. Anticipate aggressive action by the Biden administration on climate change, environmental justice, and clean energy and vehicle technologies. If Congress remains divided, legislation is unlikely to occur, but much can be done through Executive Order and other executive branch action. The administration will also promote infrastructure reform which could be significant and will require legislation that may be able to get bi-partisan support.

Federal-state coordination. Anticipate renewed state-federal coordination, with exceptions and some "patchwork quilt" effects, as the Biden administration EPA, the U.S. Department of the Interior, and DOJ join forces with progressive states on enforcement and implementation of policy priorities. Many of the environmental statutes are designed to be implemented cooperatively between the state and federal governments. This "cooperative federalism" is a balance that in many but not all cases, Trump officials favored with a more limited federal government role and a narrow interpretation of the scope of federal statutory authority. Expect Biden's EPA and DOJ to increase federal enforcement, directing the agencies to pursue appropriate cases to the fullest extent permitted by law.

Criminal enforcement. Expect criminal enforcement to be more vigorously pursued.

International engagement. Prepare for renewed engagement on international environmental and waste treaties, as the Biden administration reengages in many of these issues.

New key administration officials. Pay attention to new key officials in the new administration, some of whom will probably be announced in December. Generally speaking, cabinet-level officers are announced first. Below is a list of the cabinet-level officials in the areas of energy, environment, project development, and worker safety and the Senate committee that would review their nomination.

President-elect Biden has an established transition team with five co-chairs and a 15-person advisory board. The leaders are as follows:

Former U.S. Sen. Ted Kaufman

Appointed to the U.S. Senate from Delaware on Jan. 15, 2009 and served until Nov. 10, 2010.

Jeffrey Zients

CEO of Cranemere, a private equity firm. Past Director of the National Economic Council and Assistant to the President for Economic Policy, at the White House Feb. 2014-Jan. 2017.

Gov. Michelle Lujan Grisham

Elected Governor of New Mexico in Nov. 2018. Served three terms in the U.S. House.

U.S. Rep. Cedric Richmond

Member of the U.S. House representing LA-2. First elected in Nov. 2010.

Anita Dunn

Senior advisor on the Biden campaign.

President-elect Biden has also indicated that he intends to name the White House Chief of Staff very soon.

Other specific transition steps typically occur. In September, the Office of Management and Budget (OMB) sent a memorandum to all of the federal agencies titled "Guidance on Presidential Transition Preparation." The memo required each agency to designate a senior career official as in charge of the transition, and outlined its purpose as follows:

"This memorandum provides guidance to agencies on transition preparation requirements and deadlines consistent with the statutory obligations in the Presidential Transition Act of 1963, as amended (3 U.S.C. § 102 note) (the Act) and best practices. In addition to the ongoing work required by the Act, this guidance is intended to ensure the seamless continuity of Federal government operations and services during a transition to a second term of an administration or to a new administration. It also increases the transparency of the transition process. As agencies implement the guidance outlined below, officials should approach the work in ways that are responsive to the ongoing needs of the current administration while balancing the preparations for a potential new administration."

Biden's transition team has already signed a memorandum of understanding with President Trump's General Services Administration to begin planning for a potential handover of power. The document is required under the Presidential Transition Act and formalizes how the federal government will go about assisting Biden's transition team ahead of Election Day. For the memorandum to be effective, the GSA Administrator Emily Murphy, must sign a letter acknowledging Biden as the President-elect.

In addition to the transition team, "landing teams" will meet with each federal agency to collect information and interview selected individuals to prepare for the new administration. Those landing teams are not agency officials and do not receive confidential or privileged information, but are extraordinarily valuable to the new administration. They report regularly to the incoming White House on the immediate issues facing the

administration and provide an important conduit between the incoming President's team and the executive agencies.

**Personnel**

While landing and transition teams have already begun work (or will soon increase the pace of their work), the Trump administration still has nearly three months with which to complete its work. Amidst the changeover in political appointed positions, career staff will continue to make decisions and move matters forward. Ensure that your relationships with career officials at headquarters and regional offices are sound, as you will need to rely on them over the next six months and beyond.

It is typical for virtually all of the outgoing administration political appointees to resign before the new administration starts. The exception is often the U.S. Attorneys, who are sometimes held over in their positions. At the beginning of a new administration, political positions are either temporarily filled by political appointees or often with senior career officials.

Ensure that your relationships with career officials at headquarters and regional offices are sound, as you will need to rely on them as appointed positions change over the next six months.

**Post-Inauguration Administrative, Legislative, and Judicial Process**

Expect the new administration, upon taking office, to immediately issue a directive withdrawing pending regulations that are not yet published in the federal register. This could include final rules that are awaiting publication. This is a standard approach by a new administration.

The new administration will also review executive orders and guidance documents and rescind those that conflict with Biden policy direction. There are over a dozen, maybe two dozen, different executive orders and many, many guidance documents relevant to environmental policy direction. These do not have the force of law but often direct agencies to take specific actions. The Environmental Law Institute and Harvard Law School's Environmental and Energy Law Program have produced useful references on this subject. Note that rescinding an Executive Order, which can be done immediately, does not rescind implementing actions, such as new regulations finalized in response to the Executive Order.

Without democratic leadership in the Senate, significant environmental legislation is not expected, with the possible exception of a bi-partisan infrastructure bill. Without legislation, Biden will be particularly interested in moving policy forward using Executive Branch tools. A Biden administration will want to issue new executive orders to re-direct the federal government consistent with his policy initiatives, such as environmental justice. For example, he has already pledged to revise and reinvigorate the 1994 Executive Order 12898 (EO 12898) Federal actions to Address Environmental Justice in Minority Populations and Low-Income Populations. In addition, he has pledged that he would rejoin the Paris Accords on the first day of the administration, which can be done by Executive Order.

DOJ will likely seek to stay federal litigation, particularly litigation challenging rulemaking, to allow time to develop new administration positions. The administration would then have the option of supporting the regulation, rescinding it through the Administrative Procedure Act process, and/or replacing it with a new regulation. Currently, litigation is pending on several high profile rules, including the Navigable Waters Protection Rule that defines the scope of Clean Water Act jurisdiction, the National Environmental Policy Act

revisions, and the Affordable Clean Energy Rule which regulates greenhouse gases from coal-fired electric generating units. In addition, there is active litigation on the California waiver, which determines whether California will be allowed to continue to set vehicle emission standards.

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**Agency**

Potential Picks for EPA and USTR

https://www.rrfn.com/2020/11/09/potential-picks-for-epa-and-ustr/

In addition to USDA, there are other cabinet positions that impact agriculture. The names being highlighted by the national media for the EPA administrator include the chairperson of the California Air Resources Board Mary Nichols, the senior director of the Mom's Clean Air Force Heather McTeer Toney, Washington Governor Jay Inslee and National Wildlife Federation CEO Collin O'Mara. For the U.S. Trade Representative cabinet post, candidates include California Congressman Jimmy Gomez, former USTR general counsel Jennifer Hillman, former deputy trade representative Miriam Sapiro and McLarty Associates President and CEO Nelson Cunningham.

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**Agriculture**

Two Ag Groups File Suit Against EPA Over Dicamba Registration

https://www.agprofessional.com/article/two-ag-groups-file-suit-against-epa-over-dicamba-registration

On November 4, the American Soybean Association (ASA) and Plains Cotton Growers filed a lawsuit against the EPA and its recent registration of over-the-top dicamba products. In the suit is the claim that "some aspects of the registration decision are problematic for growers, who depend on reasonable, consistent access to dicamba for use on dicamba-tolerant soybeans and cotton."

ASA president Bill Gordon, a soybean grower from Worthington, Minn., said in a statement: "Label conditions must include protections to ensure safe, responsible use of products like dicamba, but they also cannot be so burdensome that they won't work for the farmers who need them. As this re-registration stands, the buffer length and application cutoff date will preclude many growers from using dicamba effectively during weather conditions that cause planting delays and on significant swaths of land that they rely on for cost-effective production."

On Tuesday, Oct. 27, the EPA announced a five-year approval of Xtendimax VaporGrip Xtra, Engenia and Tavium for over-the-top dicamba application. The new label included these changes from previous labels:

Downwind buffer of 240' is required and a buffer of 310' required where listed species are located. The previous label buffer was 110' for downwind.

Over-the-top application of dicamba of soybeans prohibited nationwide after June 30, and after July 30 in cotton.

An approved pH buffering agent will be required to be mixed for application to lower volatility. Buffering agents are registered with the EPA and must be doc-umented each use.

Opportunities for growers to use hooded sprayers to reduce buffers.

No more 44 oz. rate option.

The lawsuit says dicamba and dicamba-tolerant products are critical tools for farmers, but "several registration conditions impose growing restrictions and disrupt growing seasons which will diminish crop yields, cut productivity, and drive up operational costs. Some of these conditions are significantly more stringent than those found in past dicamba registrations."

ASA says it represents the interests of more than 300,000 soybean farmers nationwide.

Plains Cotton Growers members represent the largest cotton production region in the U.S., and they annually plant between 3.5–4.5 million acres of cotton.

**You can read the full lawsuit here**.

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**Air**

Drop in pandemic CO2 emissions previews world of electric vehicles

https://news.berkeley.edu/2020/11/09/drop-in-pandemic-co2-emissions-previews-world-of-electric-vehicles/

By Robert Sanders, Media relations| NOVEMBER 9, 2020

When the pandemic forced Bay Area residents to shelter in place in March, chemist Ron Cohen saw an opportunity to see how air quality was affected. He employed a unique CO2 network, BEACO2N, that he and his team had installed around the Bay Area to monitor pollution at the neighborhood level. (UC Berkeley video by Stephen McNally, https://light.berkeley.edu)

In the six weeks after the San Francisco Bay Area instituted the nation's first shelter-in-place mandate in response to the growing COVID-19 pandemic, regional carbon dioxide emissions dropped by 25%, almost all

of it due to a nearly 50% drop in road traffic, according to new study from the University of California, Berkeley.

Though emissions have steadily increased since then, the dramatic response to a sharp cut-off in vehicular fossil fuel burning shows how effectively a move toward broad use of electric-powered vehicles would reduce the major greenhouse gas responsible for climate change and global warming.

The data come from a network of carbon dioxide sensors set up around the Bay Area by UC Berkeley scientists over the past eight years — a network that is already being replicated in several cities around the world. Glasgow, Scotland, will announce tomorrow (Nov. 10) that it plans to install 25 of these monitors within the next year in time for the Nov. 1, 2021, start of the United Nations Climate Change Conference in that city.

"This is what it would look like for CO2, if we electrified the vehicle fleet," said Ronald Cohen, UC Berkeley professor of chemistry and of earth and planetary science and senior author of the study. "The implication is that emissions on the roads could be changed quickly and dramatically by policy, and we have a tool to follow that relatively quickly. This is the way to know we are on track to meet our goals."

Cohen is participating in a webinar about the project tomorrow, 8-11:45 a.m. PST, along with Mary Nichols, chair of the California Air Resources Board, and Glasgow and Scottish leaders. He and his colleagues reported the results of their Bay Area study in a paper posted online Oct. 30 in the journal Geophysical Research Letters.

Weekly carbon dioxide concentrations during the six weeks before shelter-in-place (Feb. 2-Mar. 14, purple) and six weeks during shelter-in-place (Mar. 22-May 2, green). The solid lines show the median CO2 levels across the BEACO2N network. (UC Berkeley graphic by Ronald Cohen)

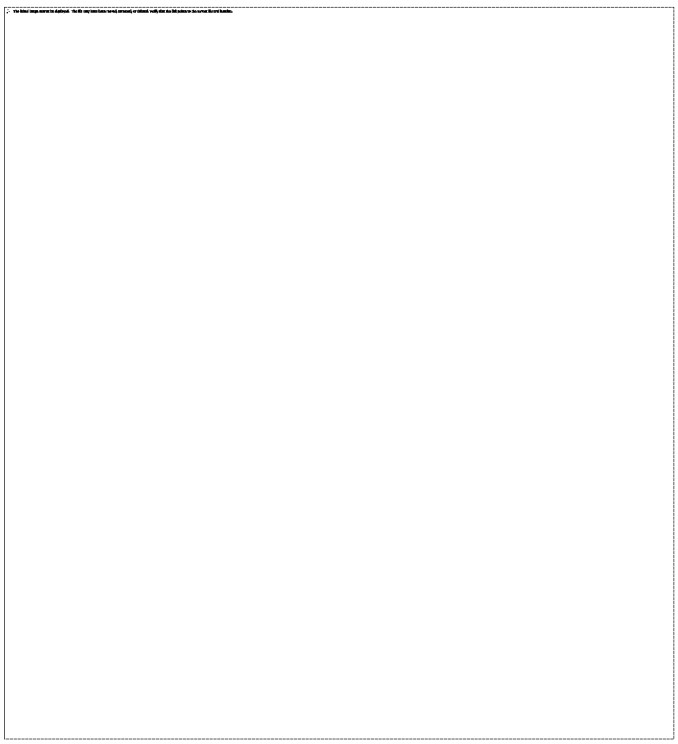
The state of California has already banned the sale of gas-powered vehicles by 2035 and has set a goal to reduce state carbon dioxide emissions by about 3% each year for the next 10 years. A statewide network like the small-scale network Cohen set up — the Berkeley Environmental Air-quality & CO2 Network, or BEACO2N — would be able to track CO2 emissions and demonstrate to legislators and the public that these efforts are effective at reducing greenhouse gases.

"We are making the case that this is the way to track urban CO2 in cities all over the world," he said. "We are trying to figure out what combination of tools make this routine enough to transfer to government agencies that would track this, or to private companies that might provide those services to government agencies in a way that is efficient at scale."

Cohen noted that no government agency routinely tracks urban carbon dioxide emissions on the ground. The federal Environmental Protection Agency (EPA) is responsible for tracking such things as ozone, NOx and particulates, but not CO2: The greenhouse gas was not one of the "criteria pollutants" the EPA was tasked with

monitoring and regulating as a result of amendments in the 1970s to the 1963 Clean Air Act. The EPA in 2009 invoked the so-called endangerment clause to regulate CO2 emissions, but the Trump administration filed a lawsuit to repeal the regulation.

"It is almost silly that we weren't measuring CO2 from the start, in the EPA network, because almost all of the sources of these pollution gases are burning fuels," Cohen said. "We measure those pollution gases, but we don't have the data in the atmosphere to say how much fuel was burned. One of the advantages of the approach we are taking is that you can imagine, nationally or internationally, merging the CO2 and the air quality emissions inventories into a single set of data and providing simultaneous air quality and CO2 analyses, much like what the National Weather Service does for ordinary and severe weather.



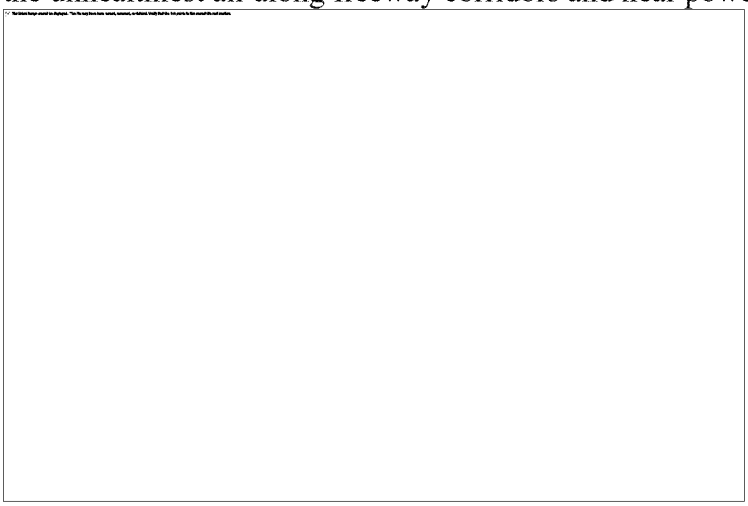
The locations of the three dozen sensors in the BEACON network employed in this study. There are a total of 72 sensors located around the Bay Area. (UC Berkeley image by Ronald Cohen)

Nearly a decade ago, Cohen set out to find a way to measure pollutants, including carbon dioxide, inexpensively enough to deploy on the neighborhood level. Per site, EPA stations can cost around $200,000, and they don't even come with CO2 sensors.

Using new technology several notches better than the carbon monoxide and carbon dioxide sensors in our homes, he is now able to build — for $8,000 — a package the size of a shoebox that every 5 seconds record levels of CO2 and four common gaseous pollutants that contribute to smog — carbon monoxide (CO), nitrous oxide (NO), nitrogen dioxide (NO2) and ozone (O3) — as well as particulate levels, such as the smoke that recently enveloped the Bay Area from fires in Northern California.

Over the past five years, he has deployed 72 of these instrument packages around the Bay Area as part of BEACO2N. Most of the networked nodes are in Oakland, Richmond, Vallejo and along the I-80 corridor, typically spaced about 2 kilometers — slightly over a mile — apart. Schools are favored sites, because his team can engage with students and teachers studying science, and he can tap into their Wi-Fi systems to send data in real time to his laboratory, where they are posted online. He and his team have also installed four stations in San Francisco, including two at the Exploratorium, and are collaborating with colleagues elsewhere to build similar networks in Los Angeles, New York City and Houston, as well as in Glasgow.

Cohen's goal is to provide governments and policymakers with the feedback they need as they try to reduce pollutants and greenhouse gases. By placing them regularly throughout the area, he also hopes to show how reducing pollutants affects every community, especially lower-income communities that suffer too often from the unhealthiest air along freeway corridors and near power plants or refineries.



An air pollution monitor mounted at a school on Mare Island in Vallejo. (Photo by Ronald Cohen).

"From an environmental justice perspective, the question is, 'If we control CO2, do we do that in an equitable way?'" he said. "With cap and trade in California, for example, it wouldn't be right if rich people shut down facilities close to them first and shifted that extra burden to where poor people live. A BEACO2N type of network would be a way of tracking those things."

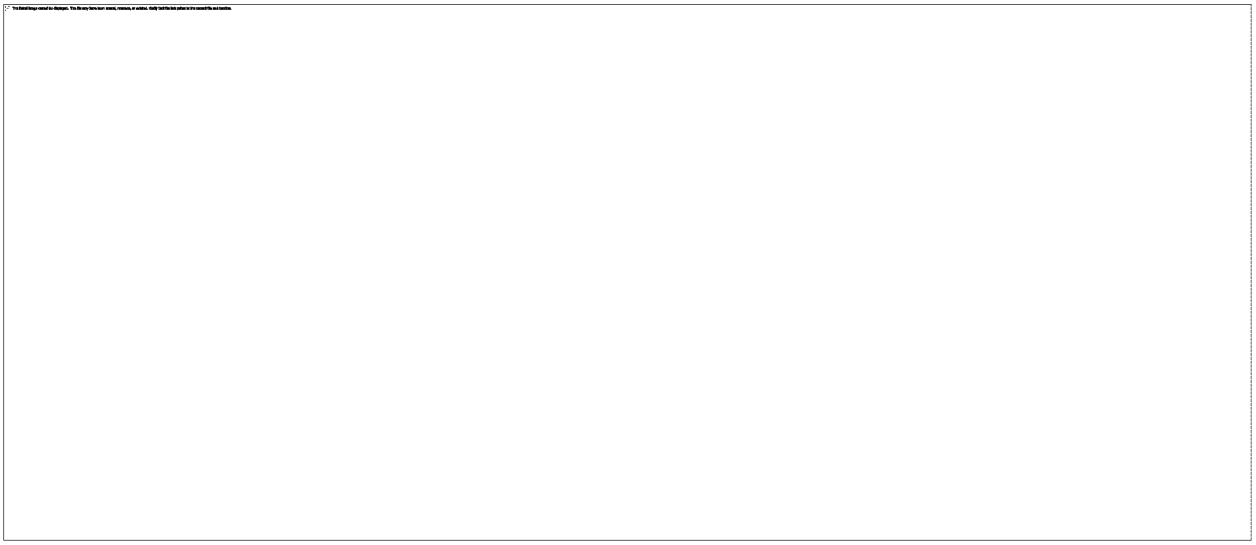
Cap and trade — a government regulatory program common in Europe, China and Canada and employed in 10 U.S. states, including California — is a way of encouraging companies to reduce their carbon dioxide emissions. Specific companies are given a limit, or cap, on the amount of CO2 they can emit, but are allowed to sell, or trade, their emission allowances to other companies if they reduce their own emissions.

Today, many cities also have climate action plans, yet they lack the data to monitor their success, Cohen said. Carbon dioxide levels around the globe are measured by NASA's Orbiting Carbon Observatory satellites and Japan's Greenhouse Gases Observing Satellites, but only on a regional level, not city by city.

"Our goal is to give people data to support what they are doing, so they can make judgements about what works effectively," Cohen said.

## A natural experiment

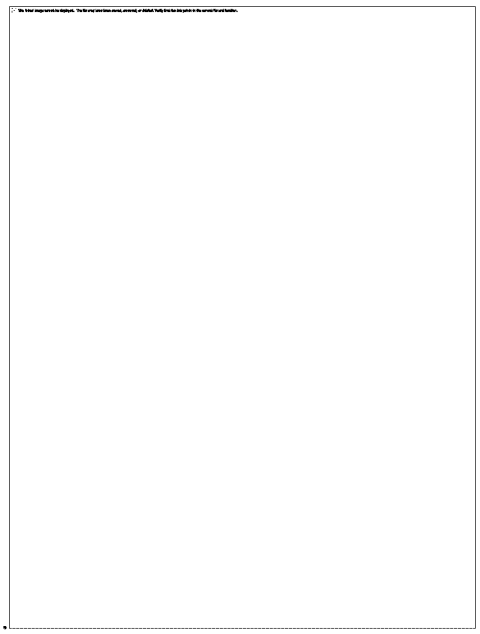
On March 16, six counties in the Bay Area became the first region in the U.S. to tell non-essential employees to stay home to stop the spread of COVID-19. Cohen saw this as an opportunity to see what happens when the use of gas-fueled cars plummets.



Carbon dioxide levels are highest along freeways because they come predominantly from vehicles. The color intensity shows how the concentrations decreased after shelter-in-place. (UC Berkeley image by Ronald Cohen)

Tapping measurements from the BEACON network, Cohen and his colleagues compared the six weeks before shelter-in-place — Feb. 2 through March 15 — with a six-week period afterward, March 22 through May 2. Thirty-five of the sensors were operational throughout that time. The team corrected for the substantial uptake of CO2 by plants in the spring and used meteorological models to extrapolate the point-source measurements to the greater Bay Area.

The team found the greatest reduction in CO2 levels during the Monday through Thursday morning rush hour, at around 7 a.m., along the major freeways, with the greatest improvement along I-880 running through Northern Oakland. Overall, human-caused CO2 levels dropped 30% after shelter-in-place restrictions limited mobility. Monitors near freeways showed that most of this decrease came about as a result of a 48% decrease in vehicular traffic. About 8% of the decrease in carbon dioxide was ascribed to diminished emissions from stationary sources, such as refineries.



During normal times, there is a large bump in CO2 emissions during the morning rush hour and a lesser bump during the evening rush hour, but these daily differences became less pronounced.

One of the 72 monitors in the Bay Area.

Such data are not available from other monitoring systems, though a citizen science network, Purple Air, sells home air quality sensors for $250 or more that measure particulates, like smoke or dust, which have been shown to increase the risk of respiratory illnesses and cardiovascular disease. Carbon dioxide emissions, on the other hand, are estimated from the amount of fuel consumed by human activity.

A recent study used such estimates of human activity to document that, during the pandemic, cities around the world saw a drop in CO2 emissions. Authored by UC Berkeley's Daniel Kammen and numerous colleagues in China, the study estimated that there was an abrupt 8.8% decrease in global CO2 emissions in the first half of 2020.

Networks like BEACO2N are an accurate and affordable way to get much better data at the neighborhood level.

"Here we would have a direct measure," Cohen said. "Going forward, we expect that direct observations of CO2 will help us refine an understanding of the emissions that are contributing to air pollution and, simultaneously, the air pollution emissions will help us refine our understanding of the emissions of CO2."

Cohen's coauthors are Alexander Turner, now at the University of Washington in Seattle; Jinsol Kim, Helen Fitzmaurice, Catherine Newman, Kevin Worthington, Katherine Chan, Paul Wooldridge of UC Berkeley; and Philipp Kohler and Christian Frankenberg of the California Institute of Technology in Pasadena. The UC Berkeley work was funded, in part, by the Koret Foundation.

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**Chemicals**

EPA, States Clash Over Pesticides

https://ocj.com/2020/11/epa-states-clash-over-pesticides/

ROCKVILLE, Md. (DTN) — State regulators are reeling from a sudden apparent policy change by EPA that will make restricting pesticides — such as dicamba — beyond the federal label much harder for states to accomplish in the years ahead.

The policy change was announced in a single footnote, buried amid dozens of pages of regulatory documents accompanying EPA's three new dicamba registrations released on Oct. 30. The footnote is only three sentences long, but it packs a punch, regulators and legal experts said. It will require states to go through state law or rulemaking processes if they want to further restrict a federal pesticide, like dicamba.

That means in 2021, most states may be limited to the federal dicamba labels, and unable to implement local dicamba cutoffs and restrictions before the spray season. Only Arkansas's cutoff date of May 25, which has gone through a state rulemaking process each year, is likely to remain in place.

That footnote also reverses decades of precedent, breaks EPA's past promises to the states and threatens to damage the longstanding cooperative relationship between federal and state regulators.

At issue is Section 24(a) and 24(c) of the Federal, Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA's governing law. Section 24(a) establishes that states have the right to regulate federal pesticides through state legislatures or rulemaking procedures, a time-consuming and often political process that can take years.

Section 24(c) is more nimble. It grants states the right to issue "special local needs labels" on an annual basis, to address local agricultural, environmental or public health needs by granting "additional uses" to federal pesticide labels.

For nearly three decades, EPA has interpreted Section 24(c) as also permitting states to "impose more restrictive measures" to federal labels. In 1996, the agency formalized this interpretation and published it as a guidance for states; it still stands on the agency's website here: https://www.epa.gov/... Restrictive 24(c) state labels became particularly popular starting in 2017, as states used special local needs labels to further restrict dicamba pesticides in an effort to control widespread off-target injury reports from the herbicides.

## THE FIRST STIRRINGS OF CHANGE

In the spring of 2019, in the midst of yet another wave of state-by-state restrictions to EPA's federal dicamba labels, the agency issued a warning to the states that it was "re-evaluating" this practice and might not allow it to continue, because it violated the actual language of Section 24(c).

State regulators rushed to defend the practice, and pesticide officials from 10 states across the country wrote to EPA urging them not to change this policy. So did the National Association of State Departments of Agriculture (NASDA) and the Association of American Pesticide Control Officials (AAPCO).

Rick Keigwin, then director of the EPA's Office of Pesticide Programs, reassured the states that no changes would be made to the agency's 24(c) interpretation without their input.

"Before adopting any changes in this regard, we will solicit public comment on our proposed new approaches," Keigwin wrote to both AAPCO and Alabama state regulators in letters sent in the spring and summer of 2019. "We look forward to a robust public dialogue with our stakeholders, partners and co-regulators on this matter."

## EPA DROPS ITS DECISION — SORT OF

That "robust public dialogue" never happened, state regulators told DTN.

"There was no public comment period, no consultation," said Leo Reed, an Indiana pesticide regulator and president of AAPCO.

Instead, on page 20 of an EPA document supporting the new 2020 dicamba registrations, EPA included a single footnote, stating that:

"FIFRA section 24(a) allows a state to regulate pesticides more restrictively than EPA under the state's own authority. However, some of the states that have imposed cut-off dates on dicamba uses have done so under section 24(c). Section 24(c) only authorizes states to issue registrations for additional uses of federal registrations to meet special local needs; if states wish to impose further restrictions on the dicamba products, or any other federally registered pesticides, they should do so under section 24(a) of FIFRA."

In an emailed response to DTN, EPA confirmed that this footnote represents an official change to its policy for all pesticides, stating that: "EPA has determined that moving forward, EPA may disapprove any state registrations under FIFRA section 24(c) that further restrict use of pesticides registered by EPA, regardless of the chemicals involved. If a state wishes to further restrict use of a pesticide, they must do so under section 24(a) of FIFRA."

The agency said the previously promised public comment period was "not appropriate as section 24(c) is being properly interpreted as written."

However, for now, the agency's guidance to Section 24(c), which permits additional state restrictions, still stands on its website.

The result is that state officials remain in a confusing legal limbo, said Brook Duer, a staff attorney at Penn State's Center for Agricultural and Shale Law.

While EPA's stance might be supported by the language of the law, the longstanding, published interpretation permitting 24(c) restrictions represents what's known as a "binding norm" under federal administrative law, he said. "So unilaterally reversing it through a footnote, without a more transparent and public process — like what EPA previously represented would be undertaken — is certainly unorthodox and may even create the basis for litigation to prevent the reversal," Duer said.

"This is still totally up in the air," he added. "There's no guidance on what happens to restrictive 24(c) labels that are in effect right now — is this a blanket invalidation of them all?"

In its press release announcing the new dicamba registrations and noting this change to 24(c), EPA linked to a very specific portion of its 24(c) guidance, a section that prohibits states from issuing labels that would "negate or void" federal label restrictions. That suggests this might be how the agency intends to implement this sudden policy change without any public deliberation, Duer said. But that portion of the guidance is immediately followed by sections of equal weight that specifically permit restrictive state 24(c) measures, he added.

"So they are cherry-picking their own previous guidance to fit the argument they suddenly want to make now," he said. "If that sounds shifty, it's because it is."

"This is not how a federal agency should be conducting itself," he added. "Doing [this] as a footnote and slipped into a press release does not engender a positive relationship with the states who are a significant portion of the 'boots on the ground' in pesticide regulation for the benefit of all."

## STATE REGULATORS REACT

State pesticide regulators told DTN the move by EPA was surprising and demoralizing.

"That was disappointing," said Rose Kachadoorian, a pesticide regulator from Oregon, a state with dozens of 24(c) registrations in place. "We are co-regulators with EPA, and we believe we have a good relationship with

EPA. But this doesn't feel like a co-regulator relationship. A change in the agency's interpretation of a law should go through a public process, especially when it deviates from a longstanding practice that EPA has said was fine in [its written guidance]."

States do still have the authority from Section 24(a) to create more restrictions on federally registered pesticides, AAPCO's Reed said. But he worries that forcing states to create entirely new state rules or laws regarding a pesticide limits their ability to react quickly to new pesticides or new environmental conditions or concerns.

The new federal dicamba labels, for example, list specific cutoff dates: June 30 in soybeans and July 30 in cotton. Those dates aren't necessarily best for every cotton- and soybean-producing state, which range widely in geography, climate and landscape, noted Josh Stamper, a Minnesota pesticide regulator. His state has enacted a June 20-cutoff date for the past three years for dicamba use.

"Every year, we've worked with commodity groups, registrants and universities to evaluate, do we need any last-minute changes? Should we extend the cutoff date?" he explained. "The challenge with using rulemaking instead of 24(c) is that it doesn't give you the ability to respond to changing rules, changing needs or changing weather."

State rulemaking processes can vary, but for many states, proposing, drafting, accepting public comment on new regulations and working through legislatures to enact them can take at least two years, added AAPCO's Reed.

"And in the meantime, your flexibility is gone," he noted. "Once that regulation is in place, if you need to tighten it or change it, that's another two-year process."

Kachadoorian said regulators are also frustrated that it appears EPA is altering its stance on 24(c) to address a single pesticide, dicamba, potentially at the expense of countless other pesticides that require state-specific restrictive 24(c) labels.

"This was never a problem until the dicamba situation," she said.

The policy change could force some states not to register federally registered pesticides if they have any local ecological or public health concerns, the New York State Department of Environmental Conservation told DTN in an email.

"In the past, New York State may have used the 24(c) special local needs process to register these [kinds of] products with New York State-specific restrictions," the agency statement said. "Without the option to use more restrictive 24(c) special local need registrations, these pesticides will likely not be approved for registration, making them unavailable for use in the state."

EPA ending states' ability to add their own restrictions to federal dicamba labels is especially frustrating, given that state regulators — who are responsible for implementing and enforcing federal labels — had no input in their development, Reed said. As a result, many concerns state regulators have raised about the language, complexity and enforceability of dicamba herbicide labels were left unaddressed once again, he said.

"These dicamba registrations were negotiated solely between the registrants and the EPA," he said. "AAPCO and its committees did offer to review any specific label language for clarity and enforceability; we made that offer to both the agency and the registrants. That hasn't happened."

**LOOKING AHEAD**

Going forward, states may find it hard to challenge EPA's new stance on 24(c) in court, despite the long-standing precedent it ends, in part because the move was so unusual, Duer added.

"I think it will be hard to get very clear, precedent-setting cases that will help states try to stick up for their ability to continue to use restrictive 24(c)'s," he said.

Nor are they likely to have the resources to devote to that, especially with state regulators staring down another season of dicamba use, which has eaten up large amounts of state pesticide regulators' budgets and time in past years. In Indiana, for example, the Indiana Office of State Chemist estimates 35% of the state's entire pesticide enforcement budget went to policing dicamba use in 2020, as well as 30% in 2019 and 60% in 2018.

"I don't know if states will be the ones to spend their limited resources in court over this particular issue," Duer said. "They are in a real bind."

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**Covid-19**

Inspirotec and Mobile Care Chicago Partner to Provide Free Virtual Home Environment Assessments for Children With Asthma Amid COVID-19 Pandemic

https://apnews.com/press-release/newswire/business-technology-virus-outbreak-pandemics-public-health-5314e51fb31edd2dfe6fd2cc6eaba0ce

EPA, Mobile Care Chicago, and Inspirotec (AirAnswersTM) are co-sponsoring a breakthrough Chicagoland clinical study to provide tele-med tools for neighborhoods suffering from allergy and asthma complicated by the COVID-19 pandemic with the patented AirAnswer's plug-and-play, in-home, airborne allergens, bacteria, and virus filter-less collection system. The goal of the study is to demonstrate effective allergy and asthma healthcare for patients and reducing hospital visits to leverage the Mobile Care Chicago Asthma Vans network, which began using telehealth in 2018.

Mobile Care Chicago and Inspirotec have teamed up to provide virtual, no-cost, home environment assessments for those with asthma and/or allergies in the Chicagoland area. Asthma is currently the most common chronic illness affecting children in low-income areas, and over 75% of children with asthma have "allergy-induced" asthma where constriction of airways is triggered by airborne allergens. Asthma is a leading cause of emergency department utilization in children, and can be fatal if left untreated.

Home environment assessments by Asthma Educators, when paired with medical care, allow families to understand and remove potential triggers from their home, such as dust mites, mold, tobacco smoke, cleaning products, and more.

Environmental Protection Agency (EPA) Region 5 in 2017-18, the organization co-sponsoring, has focused on successful high-intensity interventions for children with the most severe and hard to control asthma. The EPAs involvement is based upon "Bases for Achievement of Outcomes Alignment" with EPA strategic priorities, and an especial emphasis is given to, "reducing contaminants that can cause or exacerbate health issues." The addition of AirAnswers as means for remote assessment of the home environment has received IRB approval from CIRBI (Center for IRB intelligence), paving the way to publication of findings in peer-reviewed scientific literature.

Mobile Care Chicago's in-person home environment assessment program, started in 2012, has won three national awards for using a combination of home environment assessments and direct specialty care to cut ER utilization among Mobile Care Chicago's asthma patients to less than 5%.

Inspirotec, Inc. is the only company providing airborne allergen detection either through physicians, industrial hygienists, indoor air quality professionals, home resale, or direct to consumer. It has developed a highly sensitive patented technology for testing and measuring biological agents in the air, including bacteria, viruses and specifically SARS-CoV-2.

With a pandemic and a rising infection rate, in-person assessments have been transitioned to virtual interviews. Inspirotec has developed new technology called AirAnswers, an air monitoring device which will allow Mobile Care Chicago to conduct virtual home assessments that include environmental exposure data for the first time.

"Home air quality is one of the most crucial factors in controlling asthma episodes," said Matt Siemer, Mobile Care Chicago's Executive Director. "Research has long demonstrated that home environment assessments transform lives for people with asthma, but in the pandemic those in-person assessments aren't safe. AirAnswers allows us to understand the air our patients are breathing, and to structure our interventions and treatment plans based on their lived reality. Once we know what allergens are in the air, it's so much easier to structure solutions to get asthma triggers out of the child's environment. We're excited to be working with Tom and the Inspirotec team to bring AirAnswers to our patient families."

Inspirotec's mission is to deliver the most personalized prevention and management solutions for allergies, asthma and respiratory conditions. Mobile Care Chicago has a fleet of mobile medical clinics, with an award-winning mobile Asthma program. Mobile Care Chicago's mission is to deliver no-cost medical and preventative care, education, and support to low-income children and families within their communities aboard mobile medical clinics.

Through this partnership, Inspirotec and Mobile Care Chicago plan to open home environmental assessments to 75 families in 2021, using the AirAnswers device. Concurrently, a clinical study will be conducted to see if utilizing AirAnswers raises Asthma Control Test scores and lowers ER utilization & hospitalizations in participating families.

Those who are interested in receiving a free, virtual, home environment assessment should contact:

Rachel Lessing

rlessing@mobilecarechicago.org

Press Release Service by Newswire.com

Original Source: Inspirotec and Mobile Care Chicago Partner to Provide Free Virtual Home Environment Assessments for Children With Asthma Amid COVID-19 Pandemic

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**Covid-19**

U.S. EPA settles with New York's Quest USA Corp. for importing unregistered disinfectant product into Los Angeles

https://www.companynewshq.com/coronavirus-news/u-s-epa-settles-with-new-yorks-quest-usa-corp-for-importing-unregistered-disinfectant-product-into-los-angeles-us-epa/

LOS ANGELES — The U.S. Environmental Protection Agency (EPA) has reached a settlement with Quest USA Corp. for violations of federal pesticide law. The company, based in New York, illegally imported alcohol wipes that were not registered with the EPA through the Port of Long Beach. As the product was not EPA-registered, neither its public health claims or potential effects on human health and environment have been evaluated. The company has agreed to pay a $213,668 civil penalty.

"Since the beginning of the coronavirus pandemic, EPA has worked to ensure that the public has access to effective surface disinfectants," said EPA Pacific Southwest Regional Administrator John Busterud. "EPA will continue to monitor for illegal products with unproven or misleading public health claims."

EPA has been working with U.S. Customs and Border Protection to identify and block entry of illegal products, many of which are being imported from China. In this case, Quest attempted to import over 650,000 wipes in 20 shipments into the United States. The Quest products, BioPure Multipurpose Wipes, were halted under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), which prohibits the distribution or sale of unregistered pesticides. The company also failed to file required documents stating that it was importing pesticides into the United States.

More: Cuba boosts exportable items despite Covid-19

Under FIFRA, purported disinfectant products that claim to kill or repel viruses, bacteria or germs are considered pesticides and must be registered with the EPA prior to distribution or sale. Public health claims can only be made regarding products that have been properly tested and are registered with the EPA. The agency will not register a pesticide until it has been determined that it will not pose an unreasonable risk when used

according to the label directions. Products not registered by EPA can be harmful to human health, cause adverse effects, and may not be effective against the spread of germs.

EPA has released an expanded list of EPA-registered disinfectant products that have qualified for use against SARS-CoV-2, the novel coronavirus that causes COVID-19. The list contains over 500 additional products—including products that went through the expedited review process for emerging viral pathogens.

To view the most up-to-date list of EPA-registered disinfectant products, visit https://www.epa.gov/pesticide-registration/list-n-disinfectants-use-against-sars-cov-2

For more information on EPA resources on the coronavirus disease (COVID-19):
https://www.epa.gov/coronavirus

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**Energy**

EPA Asks SCOTUS for Delay in RFS Case

https://ocj.com/2020/11/epa-asks-scotus-for-delay-in-rfs-case/

November 9, 2020

OMAHA (DTN) — The EPA has asked the Supreme Court for an extension to file a response to a refiner's petition for review of an appeals court's January 2020 ruling on small-refinery exemptions.

HollyFrontier Corp. appealed to the high court in September after the U.S. Court of Appeals for the 10th Circuit in Denver turned down a request for the whole 10th Circuit to rehear a case involving small-refinery exemptions. In that case, the appeals court originally ruled the EPA mishandled the small-refinery exemptions program in the Renewable Fuel Standard and granted exemptions to three refiners who did not qualify.

Though the refiner has asked for the Supreme Court to hear the case, it is rare for the court to do so.

The Trump administration on Wednesday asked for an extension to Dec. 14, 2020, to file its response.

"This extension is requested to complete preparation of the government's response, which was delayed because of the heavy press of earlier assigned cases to the attorneys handling this matter," the administration's letter to the court said.

In its petition to the Supreme Court, HollyFrontier asked the court to consider whether the RFS exemption program has been implemented correctly by the EPA.

At issue is whether the agency can require small refiners to have received exemptions uninterrupted in order to continue to qualify.

Renewable Fuels Association President and CEO Geoff Cooper said it's not clear why the EPA would be interested in the case after the agency declined to act previously.

"We were surprised to see EPA signaling its intention to weigh in on the petition filed by HollyFrontier for Supreme Court review of the 10th Circuit's decision," he said in a statement.

"If EPA decides to take a position on the request for further judicial review, we hope it's to convey such review is unnecessary and falls far short of the established standards for Supreme Court's involvement. It's time to move forward and put an end to the uncertainty and instability of small-refinery exemptions, which have plagued the RFS for the past three to four years."

In addition, CVR Refining and HollyFrontier Corp. on Sept. 4 filed a petition with the Supreme Court, asking for a review of the 10th Circuit ruling. The Trump administration did not file an appeal to the Supreme Court before the deadline.

On Jan. 24, 2020, the 10th Circuit ruled EPA didn't have the authority to issue small-refinery exemption extensions to three refiners that were not originally granted waivers in 2017 and 2018.

The court also found EPA "abused its discretion" by not explaining its conclusion that a small refinery could suffer disproportionate economic hardship while also maintaining refiners passed on Renewable Fuel Standard compliance costs to consumers at the pump.

Congress allowed EPA to extend some small-refinery exemptions temporarily.

From 2007 through 2010, 59 small refineries received waivers. The U.S. Department of Energy then examined the 59 waivers and determined that 24 of them could be extended for another two years.

In 2011 and 2012, the number of exemptions was whittled down to eight, then down to seven in 2015.

The ethanol and agriculture groups were the four petitioners in the 10th Circuit case. A panel of judges found EPA abused its authority by granting small-refinery exemptions to CVR Refining and HollyFrontier that were not extensions of previously existing exemptions.

The gap-year waiver requests in question were made to "establish a chain of continuously 'extended' exemptions," the groups said.

EPA received 67 requests from small refiners for retroactive waivers for 2011 to 2018. The Trump administration denied most of those exemptions.

The requests poured in after the Trump administration decided not to appeal a January 2020 ruling from the 10th Circuit. The court ruled EPA mishandled three waivers granted to small refiners.

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**Superfund**

2 Jacksonville City Council Members Evaluating Options For Former Fairfax Superfund Site

https://news.wjct.org/post/2-jacksonville-city-council-members-evaluating-options-former-fairfax-superfund-site

Two Jacksonville City council members held a public meeting Monday to discuss future plans for the old site of the Fairfax Wood Treaters, a former Superfund site.

The site at 2610 Fairfax Street hasn't had a functioning business since 2010, and in 2012, the Environmental Protection Agency put it on the National Priorities List for superfund sites, since the soil was contaminated and considered dangerous.

In late October, the EPA held a press conference to announce its completion of the site cleanup and removal from the NPL.

Now, with the city in control of the land, council members can help decide what happens to the empty plot.

The 12-acre parcel is in an area bordering Districts 8 and 9, which falls under the jurisdiction of council members Ju'Coby Pittman and Garrett Dennis.

During the brief Monday morning meeting, Dennis said he would rather see a commercial property sprout up there, rather than anything residential, in case the area is still causing health concerns "10, 15, 20 years down the road."

"We will be somewhat held responsible," Dennis said, adding he would rather see a grocery store in that area.

"Whether it's a grocery store, like Walmart. It's a food desert," Dennis said.

The nearest Walmart to the location is nearly nine miles away on Philips Highway in Pine Forest. West of the St. Johns River, there's another Walmart in the Normandy area more than nine miles away.

The two closest Aldi locations to the plot of land are similar distances away.

Pittman said she would like to have a store there that would create jobs.

"Definitely something commercial - a grocery store, restaurant," Pittman said. "You know, [something] that can employ, and maybe even a drug store. I don't think we have a direct store in that area."

Both council members said they would meet with the city's Office of Economic Development to evaluate the best options for the land. They will also meet with the Office of General Counsel to see how the land is currently zoned.

Sky Lebron can be reached at slebron@wjct.org, 904-358-6319 or on Twitter at @SkylerLebron.

**Water**

Mining industry, Montana GOP oppose selenium limit for Kootenai River, Lake Koocanusa

https://missoulacurrent.com/outdoors/2020/11/republicans-selenium-limit/

BY LAURA LUNDQUIST | NOVEMBER 9, 2020

The Kootenai River. (Photo courtesy of Trout Underground)

The state of Montana is proposing water quality limits to protect Lake Koocanusa and the Kootenai River from selenium coming down from Canada's coalmines, but the mining industry and Republican legislators are trying to block the effort.

The Montana Department of Environmental Quality last week hosted an online public hearing as part of the comment period on proposed selenium standards in Lake Koocanusa and the Kootenai River below the Libby Dam.

On Sept. 24, DEQ proposed a limit of 8.5 millgrams per kilogram of selenium in dried whole fish tissue to protect fish and aquatic species from damage to their reproductive systems. The agency is also proposing a selenium concentration limit of 0.8 micrograms per liter in lake water and 3.1 micrograms per liter in the river. The difference is because moving water poses less of a pollution problem than standing water.

Brad Smith, Idaho Conservation League's Northern Idaho director, praised Montana's effort because it would protect the Kootenai River as it flows into Idaho too.

On Oct. 30, the U.S. Environmental Protection Agency approved Idaho's Clean Water Act report, which lists the Kootenai River as impaired for selenium. Idaho's sampling in 2019 found mountain whitefish with selenium levels in their reproductive organs that exceeded EPA limits.

"The Clean Water Act requires states to meet downstream water quality standards. Because Idaho is on the downstream end of the Kootenai River, the state of Montana must meet Idaho water quality standards at the state line," Smith said.

Studies show about 95% of the selenium in Lake Koocanusa comes from the Elk River in British Columbia, Canada. The Teck Resources coalmines sit along the Elk River that dumps into the top end of Lake Koocanusa and have been leaching selenium and nitrogen into the water for decades.

The concentration of selenium at the mouth of the Elk River started exceeding the British Columbia guideline in the early 1990s. It has continued to increase to where it's now four times the B.C. guidelines.

On Oct. 13, Randal McNair, Elk Valley coordinator for Wildsight, a Canadian nonprofit group, told the legislative Water Policy Interim Committee that Teck Resources' five mines have contaminated Fernie's drinking water wells to the point some are unusable.

"Levels of selenium have risen significantly during this last decade and a half," McNair said. "We've been living with these increasing impacts year after year. There are local residents who have potable water provided by Teck as their wells are contaminated by selenium. All as a result of the mines. It's clear there's been a failure to protect the people and the environment in the Elk Valley. I'd like to suggest that Montana cannot rely on my province, British Columbia, to ensure the safety of the water of the Koocanusa and Kootenai River."

Fortunately, the selenium in Montana's water isn't a human health hazard yet. But fish – including the endangered Kootenai River white sturgeon and the Lower Kootenai River burbot, which is on the verge of being listed as a threatened species – are living in waters that could cause their populations to dwindle further.

The international Lake Koocanusa Monitoring and Research Working Group started studying selenium contamination six years ago after Montana Fish, Wildlife & Parks found selenium levels were increasing in seven species of fish in the lake between 2008 and 2013.

Lauren Sullivan, DEQ water quality standards manager, said the DEQ standards are calculated based on the past six years of sampling, computer modeling by the U.S. Geological Survey and input from selenium experts from British Columbia and the U.S., including the EPA, USGS, tribes and the states of Idaho and Montana.

Ignoring the six-year study and the five years of sampling prior to that, Republican legislators of northwestern Montana accused the DEQ of fast-tracking the standard. A few months ago, they pushed the Water Policy Interim Committee to hear the proposal in October because the committee could vote to delay the standard for six months. But the committee ended up with a 5-5 vote, so the process moved forward.

"This is being fast-tracked by the current administration and will come under great scrutiny by the new administration," said state Rep. Steve Gunderson, R-Libby. "We're no longer just setting a scientific standard but producing a political football being used to strong-arm industry across the border."

Governor-elect Greg Gianforte has said his goal is to get rid of environmental regulations.

The selenium in Montana's water isn't a human health hazard yet. But fish – including the endangered Kootenai River white sturgeon and the Lower Kootenai River burbot, which is on the verge of being listed as a threatened species – are living in waters that could cause their populations to dwindle further.

State Rep. Neil Duram of Eureka and state Sen. Mike Cuffe of Eureka said the study didn't show a reason to set such a standard and claimed it could limit mining, development and economy in the area, even though no Montana jobs depend on the Teck Resources mines.

"I don't understand what the crisis is," Cuffe said. "What I see in the studies is a relatively small number of fish have exceeded some standard or have some level. I'm not going to argue the science. What I'm saying is people don't understand it, including myself, including all of the elected leaders of Lincoln County. Nobody is saying there's an immediate crisis. And nobody's stopping to explain the science."

Erin Sexton, University of Montana Flathead Lake Biological Station senior scientist, knows all about the science, having started her graduate studies at UM in 2000 by studying the Elk River Valley. She also participated in the research working group starting in 2014 and said it's disappointing to hear people claim the process is rushed.

"From Day 1, the members agreed that selenium posed the biggest threat to Koocanusa reservoir and the Kootenai River downstream," Sexton said. "I can also attest that this is some of the most comprehensive science that I've ever seen go into a process."

Representatives of the mining industry said the standard was too low because sampling has already produced fish and water that violates the limit. The lake water at the border averages 0.3 micrograms per liter more than what the standard would allow. They argued against a standard that would cause the lake to be designated as impaired because Montana wouldn't be able to do anything about it.

William Adams of the Utah-based North American Metals Council worried such a low standard could set a precedent for other states to follow.

Groups opposing the standard included the American Exploration and Mining Association, Montana Mining Association, Treasure State Resources Association and Teck Resources itself.

The CSKT and the Kootenai Tribes of Idaho depend on the Kootenai River for sustenance and cultural reasons, so they support a rigorous standard. On Oct. 30, the CSKT sent a letter to the Canadian Minister of Environment and Climate Change encouraging the Canadian government to take a hard look at Teck Resources' request to expand its coalmines.

Stu Levit, Confederated Salish and Kootenai Tribes mine reclamation specialist, also participated in the research working group and said without an enforceable standard, polluters have free reign to promote their bottom line. Also, a selenium standard would give Montana grounds to claim financial compensation from Teck Resources or British Columbia if contamination does affect Lincoln County's economy.

"It seems that every public meeting in this process becomes expanded to include more and more requests to delay the years'-long process based upon what I suggest are misguided and misleading unsupported stories that the process is anything but open, supported, scientific and timely," Levit said. "The notion that a Canadian mining company might be prejudiced by a process that protects U.S. waters is ludicrous."

The public comment period on the DEQ standard is open until Nov. 23. Following that, the Environmental Board of Review will make the final decision on the standard.

Comments may be submitted to Sandy Scherer, Paralegal, Department of Environmental Quality, 1520 E. Sixth Avenue, P.O. Box 200901, Helena, Montana 59620-0901; faxed to (406) 444-4386; or emailed to sscherer@mt.gov.

Contact reporter Laura Lundquist at lundquist@missoulacurrent.com.